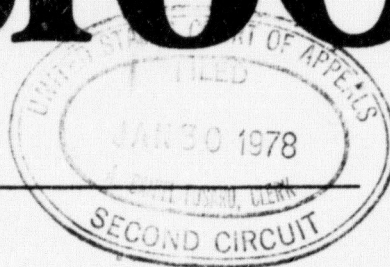


***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-6160



ORIGINAL

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

-against-

HELEN K. TASSOP d/b/a ST. ANDREW ACADEMY ON
THE SOUND, and TASSOP REALTY, INC.,
Defendant-Appellant,

-and-

ASTORIA FEDERAL SAVINGS & LOAN ASSOCIATION,
and ESTELLE LEIBOWITZ LUNGO, as Executrix of the
Estate of HOWARD LEIBOWITZ,
Defendants.

APPENDIX FOR APPELLANT

Volume I, pp. 1a - 250a

GENE CRESCENZI
Attorney for Defendant-Appellant
415 Lexington Avenue
New York, New York 10017
(212) 682-1686

PAGINATION AS IN ORIGINAL COPY

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RELEVANT DOCKET ENTRIES

(pp. 1a-6a)

DIST/OFFICE	DOCKET YR. NUMBER	FILING DATE MO. DAY YEAR	J	N/S	O	R	R 23	DEMAND \$	OTHER	JUDGE NUMBER	JURY DE	DOCKET
207/1	75 1481	09 09 75	22	220				240		0716		NEAL

PLAINTIFFS

DEFENDANTS

UNITED STATES OF AMERICA

United States of America

TASSOP, HELEN K. etc.

Helen K. Tassop; Tassop Realty Astoria Federal and Savings Loan Association; and M. Howard Liebowitz

CAUSE

26 U.S.C. §§ 7401, 7402, 7403

SUIT TO REDUCE EMPLOYMENT TAXES
Seeks \$239,802.16

ATTORNEYS

For PLAINTIFF:
AUSA Henry A. Bracht1

For DEFENDANT ASTORIA FEDERAL:
William M. Thomas
c/o Thomas & Graham
36-17 30th Avenue
Long Island City, N.Y. 11103
(212) 932-6900

For Deft LEIBOWITZ:
M. Howard Leibowitz
341 West 24th Street
New York, N.Y. 10011
929-7918

For HELEN K. TASSOP:
270 Lexington Avenue
New York, N.Y. 10017
222-7858
Robert S. Taft
277 Park Avenue NYC 10017
826-2155

CHECK
HERE
IF PAID

DATE

FILING FEES PAID

RECEIPT NUMBER

C.D. NUMBER

STATISTICAL CARDS

CARD

DATE MAILED

JS-5

DATE	NR.	PROCEEDINGS	
9-9-75		Complaint filed, Summons issued.	(1)
9-12-75		Summons returned and filed/executed.	(2)
9-12-75	XXXXXX	XXXXXXXXXXXXXXXXXXXX	
9-12-75		By JUDD, J. - Order dtd 9-9-75 setting 9-12-75 at 10 A.M. for hearing for a preliminary injunction filed.	(3)
9-18-75		Memorandum of law in support of govt's motion for a preliminary injunction filed.	(4)
9-19-75		Before JUDD J - Case called. Both sides present. Hearing begun on plttf's motion for preliminary injunction. Both sides rest. Govt's motion for preliminary injunction granted. Order to be submitted.	
9-22-75		By JUDD, J. - Order dtd 9-19-75 granting preliminary injunction filed.	(5)
9-29-75		ANSWER of Astoria Federal Savings filed.	(6)
10-1-75		ANSWER of deft Leibowitz filed.	(7)
10/2/75		By JUDD, J. - Order dtd 10/2/75 filed that the time for the defts to answer the complaint is extended to Oct. 17, 1975	(8)
10/7/75		Notice to take oral depositions filed.	(9)
10/7/75		Notice to produce filed.	(10)
10-17-75		ANSWER of Heln K. Tassop filed.	(11)
12/22/75		Request to Produce filed.	(12)
1-19-76		Notice of motion ret. 1-23-76 for an order compelling production of documents, etc. filed.	(13)
1-22-76		Before JUDD, J. - Case called. Both sides present. Govt's motion for production of documents argued. Motion granted. Documents to be provided by 2-2-76.	
1-26-76		Plttf's response to request for production etc filed.	(14)
2-3-76		Notice of Motion for a Protective Order filed.	(15)
2-3-76		Notice of Motion for Order Holding DEFT HELEN K. TASSOP in Contempt for Violation of this Court's Injunction.	(16)
2-9-76	xxxxxx	xxxxxxxxxxxxxxxx	
2-9-76		Before JUDD, J. - Case called. Govts. motion for protective order argued, Conf. held and judgment having been consented to and ordered that judgment be entered in favor of the US and against Helen K. Tassop in the amount of \$275,000.00.	
2-10-76		JUDGMENT dtd 2-9-76 (Approved by JUDD, J.) that the plttf recover of the debt the sum of \$275,000 filed. (p/c)	(17)
2-19-76		Stenographer's transcript dtd 2-6-76 filed.	(18)
3-26-76		Letter dtd 3-24-76 from Peter R. Newman filed.	(19)
4-2-76		Notice of motion ret 4-9-76 for an order correcting the judgment entered in this case on 2-6-76 filed.	(20)
4/9/76		Before JUDD, J. - Case called - Both Sides present-Motion marked submitted pending submission of papers by 4/30/76	
4-26-76		Notice of motion ret. 4-30-76 re: directing sale of property filed.	(21)
4-26-76		Notice of motion ret. 4-30-76 re: holding deft in contempt filed.	(22)
5-29-76		Letter dtd. 4-26-76 from Peter Newman to Clerk re: adjd of motions ret. 4-30-76 to 5-7-76 filed.	(23)
5/30/76		Affidavit of John M. Graham, Jr. filed.	(24)
5/7/76		Notice of Motion, ret. 5/7/76 filed re: for leave to withdraw as Counsel, etc.	(25)
5-7-76		By JUDD, J.-JUDGMENT IN CONTEMPT FILED. The deft Helen K. Tassop, is	

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	DOCKET NO. 75C-1481
USA		TASSOP	PAGE ____ OF ____ PAGES
DATE	NR.	PROCEEDINGS	
		in contempt of this Court for failing and refusing to obey the Court's 9-19-75 preliminary injunction; the deft Helen Tassop shall be imprisoned from 5-14-76 at 1 p.m. to 5-17-76 at 8 a.m. for said contempt filed. Deft to report to the U.S. Marshall for the Eastern District of New York on 5-14-76. The deft may purge herself for her contempt of the Court by paying in full by certified or cashier's check, the withholding and Social Security taxes due for the first quarter of 1976 etc. (26)	
5-7-76		Before JUDDJ-Case called. Pltff's motion for sale of property adj'd to 5-27-76. Govt's motion correcting the judgment in this case on 2-6-76. Motion granted. Order to be submitted. (See order on back of motion papers)	
5-7-76		By JUDD, J-Order dtd 5-7-76 granting motion filed on the back of document #7. ---	
5-7-76		Before JUDD, J.--Case called Both sides present. Mr. Newman's motion to be relieved as counsel granted. Govt's motion for contempt argued. Motion granted. Deft found to be in contempt. (See order on back of motion papers) Order to be submitted by XXX govt. ---	
5-8-76		By JUDD, J.--Order dtd 5-7-75 granting pltff's motion to hold deft in contempt filed on back of doc. #22. Penalty of three days imprisonment to start May 14, 1976 (27)	
5-14-76		Affidavit of H. Tassop filed. (28/29)	
5-17-76		Notice of motion ret 5-27-76 amending & correcting the judgments of this Court etc. filed with Memo in support. (28/29)	
5-27-76		Before JUDD, J-Case called. Pltffs motion directing the judicial sale of real & personal property argued, and granted. Order to be submitted. Deft's motion for amending & correcting the judgments adj'd to 6-25-76 for argument on motion.	
5-27-76		By JUDD, J-ORDER CORRECTING JUDGMENT filed. The judgment entered 2-9-76 should be amended and corrected to read "IT IS ORDERED AND ADJUDGED that the pltf, the Hited States of America recover the the deft, Helen K. Tassop, d/b/a the St. Andrew Academy of the Sound, the sum of \$297,093.50, with interest thereon at the rate of 6 percent as provided by law." (30)	
6-25-76		Before JUDD, J.-- Case called for defts motion amending the judgments of Court etc., Motion argued Decision reserved pending submission oof response by Govt and filing of Govt's motion for foreclosure and sale on 7-30-76	
7-27-76		Affidavit of J. Gramham filed. (31)	
7-27-76		Notice of motion ret. 7-30-76 with affidavit for judgment for foreclosure filed. (32/33)	
8-2-76		Motion to intervene as a deft etc., filed. (34)	
8-12-76		Suggestion of death of deft M. Howard Leibowitz during pendency of action filed. Annexed Notice of motion ret. 9-3-76 at 10 AM for the substitution of Estelle Leibowitz Lungo as deft in place of M. Howard Leibowitz. (35)	

Con'd

VIL DOCKET CONTINUATION SHEET

PLAINTIFF USA	DEFENDANT TASSOP	DOCKET NO. _____ PAGE ____ OF ____ PAGES
----------------------	-------------------------	---

DATE	NR.	PROCEEDINGS	
12-2-76		Notice of appearance for H. Tassopf filed.	(36)
3/3/77		Copy of letter of US Depart. of Justice Washington D.C. by JEROME FINK (civil trial sec Northern div.) to Robert S. Taft Esq. and Gene Crescenzi Esq. dtd 2/25/77. RE: At request of plttf. Dist. Ct. has scheduled a conf. on all matters pending for 3/16/77 filed.	(37)
3/16/77		Before Neaheer, J--motion conf-case called-attys for both sides present motion conf held-case adjd to 4/22/77 for hearing.	---
4-5-77		Plttf's opposition to motion to intervene by St. Nicholas Greek Orthodox Church filed.	(38)
4/12/77		Trial subpoena ret and filed executed.	(39)
4/21/77		Supp memo of deft filed.JLJ	(40)
-22-77		Before NEAHER, J-Case called. Deft's motion to intervene on behalf of St. Nicholas Greek Orthodox Chyrch argued and denied. Deft's motion for constitution of a three judge court argued and denied. Hearing begun. Court reserves decision on the issues. Attys to submit furthur briefs. Hearing concluded. mg	---
4-25-77		Supplemental memorandum of Helen Tassop filed. mg	(41)
4-25-77			
5-4-77		Sten. transcript dtd 5-27-76 filed. mg	(42)
5/10/77		Deft Tassop's Brief filed. tk	(43)
5/12/77		Gvt's response to brief(submitted on 5/5/77 by def. Helen Tassop) submitted in a letter form. dtd 5/10/77. from Jerome Fink(Chief Civil Trial Section, Northern Region) filed.	(44)
6-3-77		Sten. transcript dtd 4-22-77 filed. mg	(45)
6-6-77		By NEAHER, J Memo & Order dtd 6-3-77 that a hearing will be held on 6-23-77 to determine whether the 1974 assessment for the two quarters in 1969 is time-barred. Copies mailed. mg	(46)
6-23-77		Before NEAHER, J. - Case called. Attys for both sides present. Hearing ordered & begun. Hearing concluded. Decision reserved. mm	(47)
6-30-77		Supplemental memorandum of U.S. of June 1977 filed. mm	(48)
7/5/77		Answering supplemental memorandum for deft filed. tk	(49)
7/18/77		Letter filed to Judge Neaheer from Robert S. Taft dtd 7/13/77, re: Justice Depts letter of 7/8/77. tk	(50)
7/18/77		Copy of letter filed to Judge Neaheer from U.S. Dept of Justice dtd 7/8/77, re: comments on the defts answering memorandum dtd 7/1/77. tk	(51)
7/27/77		By NEAHERJ - Judgment for the foreclosure of Federal Tax Liens and the judicial sale of real property filed. tk	(52)
7/27/77		By NEAHERJ - Order filed tha the judgment entered on 2/9/76 as amended on 5/27/76 is further amended to provide that "the plttf, the U.S.A., recover of the deft, Helen K. Tassop, the sum of \$263,992.37, with interest thereon as provided by law. The Court is also entering an appropriate judgment for the foreclosure of the federal tax liens and the judicial sale of the school and the surrounding property. tk	(52)
7/27/77		By NEAHER, J.- Order filed that the judgment entered on 2/9/76 as amended on 5/27/76, be further amended to read: It is ordered	

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	DOCKET NO. 75 C 1481
USA		TASSOP	PAGE ____ OF ____ PAGES
DATE	NR.	PROCEEDINGS	
8/25/77		and adjudged that the plttf, the U.S.A., recover of the debt, Helen K. Tassep, d/b/a the St. Andrew Academy on the Sound, the sum of \$263,992.37, with interest thereon as provided by law.tk (53)	
8-25-77		Notice of appeal filed. Docket entries and duplicate of notice of appeal mailed to the C of A. tk (54)	
8/26/77		Before NEAHER, J. - Case called. Counsel present. Order to show cause ret 9-6-77 at 4 P.M. why a supplemental order should not be entered-signed. Deft's order to show cause ret 9-6-77 at 4PM why an order should not be entered staying and restraining plttf from executing the judgment for a period of 120 days signed. - Deft directed to deposit tuition in an escrow account. Plttf shall proceed to vacate tax liens.mm	
8/29/77		Deft. HELEN K. TASSOP's BOND of undertaking on appeal in the amt. of \$250.00 in cash, deposited in court Registry. lg. (5)	
8/31/77		Sten's transcript dtd 8/25/77 filed. jlj (5)	
8/31.77		By Neaheer, J Order dtd 8/25/77 filed re that plttf show cause on 9/6/77 why an order should not be granted etc.; and that pending the hearing and determination of this motion the plttf is enjoined and restrained from taking steps in execution of the judgment other than continuation of advertising of the notice of sale pursuant to the judgment of closure. jlj (5)	
9/1/77		By Neaheer, J Order dtd 8/25/77 filed re order to show cause that the defts appear on 9/6/77 to show cause why the attached Supp Order should not be entered in this proceeding. jlj (5)	
9-6-77		Copy of notice of appeal returned undeliverable, after being forwarded to Howard Liebowitz. tk (5)	
9-12-77		Before NEAHER, J. - Case called. Attys for all parties present. Plttf's motion for the entry of a supplemental order argued and denied. Case adj'd to 9-16-77 at 3 P.M. for status conference.mm	
9-15-77		Before NEAHERJ-Case called. Deft's motion to stay foreclosure and sale of the school argued and held in abeyance. mg	
9-19-77		Stenographer's transcript dtd 6-23-77 filed.mm (59)	
9-19-77		Notice of motion ret 10-6-77 for a judgment staying execution and sale of the premises etc filed. mg. (60)	
9-26-77		Before NEAHER, J. - Case called. Attys for both sides present. Sale date stayed for 30 days. Case adj'd to 10-6-77 at 10 A.M. for motion.mm	
9/26/77		Notice of appeal filed. Copy to C of A.(USA) mg (61)	
9/30/77		Notice of appeal filed. Certified copies to C of A. jj (62)	
10-4-77		Mandate from C of A that the judgment of the USDC is dismissed. jj (63)	
10/7/77		Notice of motion ret 10-6-77 for an order adjudging debt Helen K. Tassop in contempt of court and memorandum in support of motion filed. ld (64/65)	
10/12/77		Before NEAHERJ - Case called. Attys for both sides present. Defts motion to expunge lien of the debt - the estate of Leibowitz - held in obedience. - govts motion to hold debt - Tassop in contempt held in obedience. Case adj'd to 10/26/77 at 10:00 a.m. tk	
		Affidavit of Joseph Espstein filed. tk	
		Summons returned and filed executed. tk	

United States of America -v- HELEN K. TASSOP, et al
VIL DOCKET CONTINUATION SHEET

PLAINTIFF U.S.A.	DEFENDANT TASSOP, et al	DOCKET NO. 75-C-1481
		PAGE ____ OF ____ PAGES

DATE	NR.	PROCEEDINGS
10/25/77		Before NEAHER, J. Case called. Attys for all sides present. Defts motion for a stay of judgment -pending appeal- ARGUED & GRANTED. ORDER filed. The notice of motion of 2nd mortgagee & the matter of difference of opinion of expert witnessess- referred to U.S. MAGISTRATE. <i>lg</i> MAGISTRATE notified by copy of this calendar. <i>lg</i>
10/26/77		BY NEAHER, J. ORDER dtd 10/25/77 that pltff. & other officers, agents, acting on its behalf are stayed and restrained from taking any steps in execution of the judgment in favor of pltff. pending decision of the appeals presently pending in the U.S.Court of Appeals for the Second District, filed. <i>lg</i> (66)
0/28/77		By NEAHERJ Order filed referring case to U.S. Mag. tk (C/M) (67)
10/28/77		Letter filed to Judge Neahe from Prosper K. Parkerton dtd 10/21/77, re: enclosure of appraisal, prepared by an appraisor of the IRS.(exhibit attached)(68)

COMPLAINT
(Filed September 9, 1975)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

(pp. 7a-15a)

----- x
UNITED STATES OF AMERICA, :

Plaintiff :

v. :

HELEN K. TASSOP, d/b/a
ST. ANDREW ACADEMY ON THE
SOUND; TASSOP REALTY, INC.;
ASTORIA FEDERAL SAVINGS AND
LOAN ASSOCIATION; and
M. HOWARD LEIBOWITZ, :

Defendants
----- x

CIVIL ACTION NO.
75C 1481
C O M P L A I N T

The United States of America, by its attorney, David G. Trager, United States Attorney for the Eastern District of New York, for its cause of action complains and alleges as follows:

COUNT I

I

This is a civil action brought by the United States of America to obtain a judgment for unpaid federal employment taxes, penalties, and interest against the taxpayer-defendant, Helen K. Tassop.

II

This action is commenced pursuant to Sections 7401 and 7403 of the Internal Revenue Code of 1954, at the direction of the Attorney General of the United States of America, with the authorization and at the request of the Chief Counsel, Internal Revenue Service, a delegate of the Secretary of the Treasury of the United States of America.

- 2 -

III

This Court has jurisdiction over this action pursuant to 28 U.S.C., Sections 1340 and 1345 and Section 7402 of the Internal Revenue Code of 1954.

IV

(a) The taxpayer-defendant, Helen K. Tassop, operates a private educational institution under the name of St. Andrew Academy on the Sound at 158-07 Riverside Dr. and/or 157-50 9th Ave., Beechhurst, New York 11357 within the jurisdiction of this Court, and may be served with process at those addresses, or, in the alternative, at her residence 162-01 Powells Cove, Beechhurst, New York 11357.

(b) The defendant, Tassop Realty, Inc., is a domestic corporation wholly-owned by the defendant, Helen K. Tassop, having a principal office and place of business at 158-07 Riverside Dr., Beechhurst, New York, within the jurisdiction of this Court.

(c) The defendant, Astoria Federal Savings and Loan Association (formerly Metropolitan Savings and Loan), has its principal place of business at 75-25 Metropolitan Ave., Middle Village, Queens, New York, within the jurisdiction of this Court.

(d) The defendant, M. Howard Leibowitz resides at 341 West 24th St., New York City, New York, within the jurisdiction of this Court.

V

A delegate of the Secretary of the Treasury of the United States made assessments against the taxpayer-defendant, Helen K. Tassop, for unpaid federal withholding (WH), Federal Insurance

Contribution Act taxes (FICA), and Federal Unemployment Tax Act taxes (FUTA) for twenty-one taxable quarters and periods from 1969 through 1974 in the amounts and on the dates set forth in Exhibit A which is attached to this complaint and incorporated herein by reference.

VI

Notice of the assessments referred to in paragraph V, above and a demand for payment thereof was made upon the taxpayer-defendant, Helen K. Tassop, on the dates set forth in Exhibit A which is attached to this complaint and incorporated herein by reference.

VII

Despite notice of and demand for payment of the assessments referred to in paragraph V above, there remains due and owing to the United States on said assessments after application of all payments made the sum of \$239,802.16 plus accrued interest.

VIII

The defendant-taxpayer, Helen K. Tassop, is in arrears in the payment of withholding and FICA taxes for the first and second quarters of 1975.

IX

Pending the disposition of the present litigation, there is a substantial possibility that the defendant, Helen K. Tassop, will fail to pay over to the United States taxes withheld from the wages of the employees of the St. Andrew Academy on the Sound as required by 26 U.S.C., Sections 3102(a)

3402(a) and said failure will result in irreparable injury to the United States for which there is no adequate remedy at law.

WHEREFORE, plaintiff, United States of America prays as follows:

1. That, pending the determination of this suit, this Court order the defendant, Helen K. Tassop, to pay over to the United States any and all FICA taxes and federal income taxes required to be withheld by her from the wages of the employees of St. Andrew Academy as follows:

(a) to deposit any and all federal taxes so withheld with a Federal Reserve bank or an authorized commercial bank within three (3) banking days after the close of the Academy's payroll period (whether weekly, bi-weekly, semimonthly or otherwise);

(b) to obtain a validated depository receipt from said Federal Reserve bank or other authorized commercial bank;

(c) to exhibit each such receipt upon demand to an Internal Revenue Service collection officer assigned to verify that said deposits are being made as directed by this Court;

(d) to file timely quarterly withholding and FICA tax returns (Forms 941) and timely annual FUTA tax returns (Forms 940) with depository receipts attached.

2. That judgment be entered in favor of the United States of America against the taxpayer-defendant, Helen K. Tassop, for assessed unpaid federal withholding taxes, FICA taxes and FUTA taxes, plus penalties and interest in the amount of \$239,802.16, plus accrued statutory additions.

11a

- 5 -

COUNT 2

X

The plaintiff, United States of America, repeats and realleges each and every allegation set forth in Count I of this complaint as if specifically set forth herein, and alleges, in addition as follows:

XI

As a result of the assessments described in paragraph V above, liens in favor of the United States arose as of the dates of said assessments on all property and rights to property belonging to the taxpayer-defendant Helen K. Tassop.

XII

Notices of the liens arising by virtue of the assessments referred to in paragraph V above were filed against Helen K. Tassop, d/b/a St. Andrew Academy and Tassop Realty, Inc., with the Register's Office, Queens County, New York and the New York Secretary of State all as is more particularly set forth in Exhibit B attached to this complaint and incorporated herein by reference.

XIII

The defendant-taxpayer, Helen K. Tassop, as the sole proprietor of the St. Andrew Academy on the Sound is the owner of the personal property, specifically furniture, fixtures and equipment used in the operation of said Academy.

XIV

The defendant-taxpayer, Helen K. Tassop, is the sole owner of the outstanding stock of the corporate-defendant, Tassop Realty, Inc.

XV

The personal property used by the defendant-taxpayer, Helen K. Tassop, in the operation of the St. Andrew Academy on the Sound and the stock interest of the defendant-taxpayer, Helen K. Tassop, in the corporate-defendant, Tassop Realty, Inc., are subject to the plaintiff's tax liens.

XVI

The corporate-defendant, Tassop Realty, Inc., owns the real property where the St. Andrew Academy is located, and more particularly described as follows:

(a) Real property located at 158-07 Riverside Dr. Beechhurst, New York, consisting of Lots 1 and 7 which were acquired by Tassop Realty, Inc., on August 23, 1961, all as more particularly described in Exhibits C and D attached hereto and incorporated herein by reference.

(b) Real property located at 157-50 9th Ave., Beechhurst, New York acquired by Tassop Realty, Inc., or about October 15, 1961 and more particularly described in Exhibit E attached hereto and incorporated herein by reference.

XVII

The defendants, Astoria Savings and Loan Association (formerly Metropolitan Savings and Loan Association) and M. Howard Leibowitz are joined in this action pursuant to Section 7403(b) of the Internal Revenue Code of 1954 (26 U.S.C.)

because they claim an interest in the real property described in paragraph XVI above by virtue of certain recorded mortgages more particularly described in Exhibits F, G, and H attached hereto and incorporated herein by reference, and for no other reason.

WHEREFORE, plaintiff, United States of America, prays:

1. That this Court determine that the United States of America has valid and subsisting tax liens upon all property and rights to property of the taxpayer, Helen K. Tassop, in the amount of the outstanding tax liability of \$239,802.16, plus statutory additions.
2. That this Court determine that the plaintiff has valid and subsisting federal tax liens on the personal property owned by the defendant, Helen K. Tassop, used in the operation of the St. Andrew Academy as described in paragraph XIII above and that the federal tax liens be foreclosed on said property and said property sold in partial satisfaction of said federal tax liens.
3. That this Court determine that the plaintiff has valid and subsisting federal tax liens on the stock interest which the defendant, Helen K. Tassop, has in the corporate-defendant, Tassop Realty, Inc., and that the federal tax liens be foreclosed on said stock interest; and, that pursuant to Rule 70 of the Federal Rules of Civil Procedure, the corporate-defendant be directed to promptly liquidate said corporate-defendant, including but not limited to the conveyance of the real property described in paragraph XVI above, the delivery of deeds to the eventual purchaser of

said real property, the execution of any other documents, and the performance of all specific acts necessary to the prompt and orderly liquidation of the corporate-defendant, Tassop Realty, Inc.; and that the proceeds of said liquidation, including the sale of the real property described in paragraph XVI above be distributed to the plaintiff and any other party entitled thereto.

4. That, pending the determination of this suit, this Court enjoin any defendant possessed of the sole stock ownership in Tassop Realty, Inc., from transferring, selling, secreting, redeeming, negotiating, destroying, removing, encumbering, pledging, hypothecating or otherwise disposing of any and/or all stock owned by or for the defendant, Helen K. Tassop, in the corporate-defendant, Tassop Realty, Inc., and restrain the corporate-defendant, Tassop Realty, Inc., from transferring on its books or records title to any stock owned by or for the defendant, Helen K. Tassop, and from paying any dividends on said stock.

5. That this Court order that each and every certificate of stock evidencing ownership in Tassop Realty, Inc., be surrendered to the Clerk of this Court pending further order of this Court.

6. That the United States be granted a judgment for any difference between the outstanding balance owed it by defendant, Helen K. Tassop, as set forth in paragraph V of Count I including accrued penalties and interest, and the amount received through the foreclosure of the tax liens of the United States.

7. That the plaintiff be allowed its costs in this action and such further relief as is just and proper.

DAVID G. TRAGER
United States Attorney

By:


Henry A. Bracht
Assistant United States Attorney

OF COUNSEL:

J. BRIAN FERREL
Trial Attorney, Tax Division
U.S. Department of Justice
Washington, D. C. 20530
Telephone: (202) 739-2997

EXHIBITS ANNEXED TO FOREGOING COMPLAINT:

EXHIBIT A - LIST OF ASSESSMENTS FOR UNPAID TAXES

16a

<u>Accrued Penalties(3)</u>	<u>Accrued Interest(1)</u>	<u>Bal. (pp. 16a-18a) Due</u>	<u>Date Notice of Deficiency Filed</u>
\$ 278.15	\$ 334.40	\$15,527.81	See Attached Schedule
278.15	334.40	15,384.88	
2,048.76	2,420.67	19,788.10	
2,127.60	2,957.41	22,961.43	
2,008.98	2,735.44	21,375.69	
2,356.08	3,128.54	24,142.42	
2,683.26	3,481.31	26,997.64	
2,410.56	3,129.53	23,820.49	
2,742.12	3,391.81	25,746.65	
2,549.74	3,005.95	24,231.46	
1,912.81	2,981.41	16,066.63	
-0-	137.68	1,454.85	
1,699.23	2,829.87	23,185.94	
-0-	15.25	277.65	
170.54	261.61	4,842.67	
46.34	35.39	322.47	
-0-	3.28	834.96	
115.38	146.59	6,223.07	
139.80	128.88	7,210.83	
123.15	146.59	6,128.59	
144.21	150.97	6,869.77	
<u>\$23,834.86</u>	<u>\$29,756.98</u>	<u>\$293,394.00</u>	

SCHEDULE OF UNPAID LIABILITIES

17a

Assessed Penalty	Assessed Interest	Assessments/ Credits	Unpaid Assessed Bal.
\$2,317.93(4)	\$3,093.88	\$ -0-	\$14,915.26
231.75(5)			
2,317.93(4)	2,950.95	-0-	14,772.33
231.75(5)			
2,645.58(4)	1,593.52	2,416.83	15,318.67
1,303.97(3)	36.00(2)		
569.12(6)			
2,956.02(4)	1,381.84	-0-	17,876.42
1,223.28(3)			
591.20(6)			
2,790.48(4)	1,172.00	-0-	16,631.27
948.76(3)			
558.10(6)			
3,272.35(4)	981.67	-0-	18,657.80
719.95(3)			
594.43(6)			
3,726.87(4)	931.12	-0-	20,833.07
522.21(3)			
745.37(6)			
3,348.06(4)	602.65	-0-	18,280.40
267.34(3)			
669.61(6)			
3,048.50(4)	263.55	-0-	19,612.72
304.86(3)			
761.70(6)			
2,217.93(4)	231.80	-0-	18,675.77
772.65(3)			
579.60(6)	-0-	-0-	12,172.41
641.43(4)	18.00(2)		
641.43(5)	16.37	16,434.60	1,317.17
894.33(6)	410.66	-0-	19,656.84
447.17(3)	18.00(2)		
262.40(6)	-0-	12,005.77	262.40
215.52(6)	3.54	7,853.82	4,410.52
141.51(7)			
21.55(3)			
154.47(6)	39.93	4,634.22	240.74
46.34(3)	-0-		
821.60(6)	-0-	16,633.56	831.68
662.00(4)	1,107.63	-0-	5,961.10
45.00(5)			
1,665.00(4)	1,062.45	-0-	6,942.15
54.00(5)			
1,026.00(4)	689.53	-0-	5,858.85
38.00(5)			
1,002.00(4)	519.02	-0-	6,574.59
46.00(5)			
49,178.81	\$17,124.61	\$59,978.60	\$259,802.16

(5) Miscellaneous Penalty.

(6) Failure to make Deposits Penalty - Code § 6656(a)

(7) Bad Check Penalty - Code § 6657

(8) Notice of and demand for payment of these assessments given on 5-18-72.

(9) Notice of and demand for payment of these assessments given on 8-11-72.

Taxpayer: Helen Koula Tasso, 18a
 St. Andrew Academy
 CC:NY-GL 213-73/LDZ

Taxable Period	Type of Tax Form # of Return	Date of Assessment & Notice and Demand	Assessed Tax
1Q69	WH/FICA 941	10-28-70	\$9,271.70
2Q69	WH/FICA 941	10-28-70	9,271.70
4Q69	WH/FICA 941	5-16-72	11,382.31
1Q70	WH/FICA 941	5-16-72 (3)	11,326.08
2Q70	WH/FICA 941	5-16-72 (3)	11,161.93
4Q70	WH/FICA 941	5-16-72 (3)	13,089.38
1Q71	WH/FICA 941	5-16-72 (3)	14,907.50
2Q71	WH/FICA 941	5-16-72 (3)	13,392.24
4Q71	WH/FICA 941	5-16-72 (3)	15,234.01
1Q72	WH/FICA 941	8-02-72 (3)	15,453.37
2Q72	WH/FICA 941	8-02-72 (3)	11,592.81
4Q72	WH/FICA 941	7-09-73	16,434.00
1Q73	WH/FICA 941	9-17-73	17,886.68
2Q73	WH/FICA 941	10-01-73	12,005.77
2Q74	WH/FICA 941	8-05-74	5,302.67
		10-28-74	6,579.55
3Q74	WH/FICA 941	12-23-74	4,634.22
4Q74	WH/FICA 941	3-24-75	16,623.33
1969	FUTA 940	11-18-74	3,846.47
1970	FUTA 940	11-18-74	4,660.70
1971	FUTA 940	11-18-74	4,105.32
1972	FUTA 940	11-18-74	4,807.57
			<u>\$233,477.54</u>

- (1) Interest continues to accrue at a daily rate of \$37.21 from April 17, 1975 until June 30, 1975. Commencing July 1, 1975 the annual rate of interest will be nine percent. Code §§ 6601(a), 6621(a)
- (2) Lien Fees.
- (3) Failure to Pay Penalty - Code § 6651(a)(2).
- (4) Delinquency Penalty - Code § 6651(a)(1).

19a

EXHIBIT B - NOTICES OF LIENS RESULTING FROM ASSESSMENTS
(pp. 19a-20a)

EXHIBIT B

SCHEDULE OF NOTICE OF FEDERAL TAX LIENS FILED

Taxpayer: Helen Koula Tassop d/b/a
St. Andrew Academy
CC:NY-GL 213-73/LDZ

<u>Period</u>	<u>Type of Tax</u>	<u>Helen Koula Tassop</u>	
		<u>Register's Office</u> <u>Queens County</u>	<u>New York Section</u> <u>of State</u>
1Q69	WH/FICA	11-12-74	
2Q69	WH/FICA	11-12-74	
4Q69	WH/FICA	5-19-72	6-29-72
1Q70	WH/FICA	5-19-72	6-29-72
2Q70	WH/FICA	5-19-72	6-29-72
4Q70	WH/FICA	5-19-72	6-29-72
1Q71	WH/FICA	5-19-72	6-29-72
2Q71	WH/FICA	5-19-72	6-29-72
4Q71	WH/FICA	5-19-72	6-29-72
1Q72	WH/FICA	8-04-72	8-08-72
2Q72	WH/FICA	8-04-72	8-08-72
4Q72	WH/FICA	7-20-73	
1Q73	WH/FICA	10-09-73	
2Q73	WH/FICA	6-10-74	
2Q74	WH/FICA	12-09-74	
3Q74	WH/FICA	4-17-75	
4Q74	WH/FICA	4-17-75	
1969	FUTA	3-11-75	
1970	FUTA	2-24-75	
1971	FUTA	12-09-74	
1972	FUTA	12-09-74	

NOMINEE LIENS

Tassop Realty, Inc.
158-07 Riverside Dr.
Whitestone, N.Y.

Tassop Realty, Inc.
157-50 9th Avenue
Whitestone, N.Y.

Secretary	Register's Office Queens County	New York Secretary of State	Register's Office Queens County	New York Secretary of State
	11-12-74	4-29-75	3-17-75	4-29-75
	11-12-74	4-29-75	3-17-75	4-29-75
	2-22-73	4-29-75	2-22-73	4-29-75
	2-22-73	4-29-75	2-22-73	4-29-75
	2-22-73	4-29-75	2-22-73	4-29-75
	2-22-73	4-29-75	2-22-73	4-29-75
	2-22-73	4-29-75	2-22-73	4-29-75
	2-22-73	4-29-75	2-22-73	4-29-75
	2-22-73	4-29-75	2-22-73	4-29-75
	2-22-73	4-29-75	2-22-73	4-29-75
	2-22-73	4-29-75	2-22-73	4-29-75
	2-27-74	4-29-75	2-27-74	4-29-75
	2-27-74	4-29-75	2-27-74	4-29-75
	3-12-75	4-29-75	3-12-75	4-29-75
	12-09-74	4-29-75	4-29-75	4-29-75
	4-17-75	4-29-75	4-17-75	4-29-75
	4-17-75	4-29-75	4-17-75	4-29-75
	3-12-75	4-29-75	3-12-75	4-29-75
	4-29-75	4-29-75	4-29-75	4-29-75
	12-09-74	4-29-75	4-29-75	4-29-75
	12-09-74	4-29-75	4-29-75	4-29-75

SUMMONS
(Filed September 12, 1975)

SUMMONS IN A CIVIL ACTION

CIV. 1.17-111
(Formerly D. C. Form No. 45 Rev. 11-1-73)

United States District Court

CIS:HAB:gp

FOR THE
Eastern District of New York

CIVIL ACTION FILE NO.

75C 1481

UNITED STATES OF AMERICA,

Plaintiff

HELEN K. TASSOP, d/b/a ST. ANDREW ACADEMY ON THE
SOUND; TASSOP REALTY, INC.; ASTORIA FEDERAL
SAVINGS AND LOAN ASSOCIATION; and
M. HOWARD LEIBOWITZ,

Defendants.

SUMMONS

To the above named Defendants:

You are hereby summoned and required to serve upon

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

plaintiff's attorney, whose address

225 Cadman Plaza East
Brooklyn, New York 11201

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Lewis Orgel

Clerk of Court.

W. Marc Killy

Deputy Clerk.

Date: September 9, 1975

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

ORDER OF JUDD, J. FILED SEPTEMBER 12, 1975 DIRECTING
HEARING ON MOTION FOR PRELIMINARY INJUNCTION IN
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
CLERK'S OFFICE
COURT E.D. N.Y.

SEP 12 1975

TIME A.M.
P.M.

----- x
UNITED STATES OF AMERICA, :

Plaintiff :

v. :

HELEN K. TASSOP, d/b/a
ST. ANDREW ACADEMY ON THE
SOUND; TASSOP REALTY, INC.;
ASTORIA FEDERAL SAVINGS AND
LOAN ASSOCIATION; and
M. HOWARD LEIBOWITZ,

Defendants
----- x

CIVIL ACTION NO.

75C 1481

O R D E R

AND NOW this 9th day of September, 1975, upon motion
of the plaintiff, United States of America, it is hereby
ordered that a hearing on the plaintiff's Motion for a
Preliminary Injunction filed herein shall be held before the
United States District Court for the Eastern District of New
York at the United States Courthouse in Brooklyn, New York,
in the courtroom presided over by the undersigned on the
✓ 19th day of September, 1975, at 12 o'clock in the noon.


UNITED STATES DISTRICT JUDGE

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION

(Filed September 18, 1975)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

(pp. 23a-28a)

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ SEP 18 1975 ★

----- x

UNITED STATES OF AMERICA,

Plaintiff :

v. :

HELEN K. TASSOP, et al., :

Defendants :

----- x

CIVIL ACTION NO. 75 C 1481

MEMORANDUM OF LAW IN SUPPORT
OF THE GOVERNMENT'S MOTION
FOR A PRELIMINARY INJUNCTION

TIME A.M.
P.M.

This is a civil action in which the United States seeks to obtain a preliminary injunction enjoining the taxpayer-defendant, Helen K. Tassop, from transferring certain assets pending a determination of the merits of the tax liabilities in question.

QUESTION PRESENTED

Whether the Court should enter a preliminary injunction:

(1) Requiring the defendant-taxpayer, Helen K. Tassop, to remain current on the payment of employment taxes pending a final determination of this litigation.

(2) Enjoining the transfer, pledge or other disposition of her stock interest in Tassop Realty, Inc.; and

(3) Enjoining the defendant, Tassop Realty, Inc. from selling, transferring or encumbering certain real property pending a final determination of this matter.

STATEMENT

It is the contention of the United States of America as more particularly set forth in its complaint and motion

papers filed herein that the defendant-taxpayer, Helen K. Tassop, is indebted to the United States for unpaid employment taxes in the amount of approximately \$239,000, plus accrued interest. (See Exhibit A to the Government's complaint.) This figure does not take into account unpaid employment taxes for the first and second quarters of 1975.

The defendant-taxpayer, Helen K. Tassop, owns all of the stock of the corporate defendant Tassop Realty, Inc. Tassop Realty owns the real estate and buildings at which the Saint Andrew Academy on the Sound is operated by Helen K. Tassop. The real property titled in the name of Tassop Realty, Inc. has an estimated fair market value of approximately \$235,000 and is subject to outstanding encumbrances in favor of the defendants, Astoria Federal Savings and Loan Association and M. Howard Leibowitz in the amount of approximately \$90,000 to \$95,000. Said property is the only known source of collection for the unpaid tax liabilities of the taxpayer.

It is apparent that the tax liabilities asserted by the United States are clearly in excess of the net fair market value of said property. If the taxpayer continues to incur substantial employment tax liabilities while this litigation is pending, there will be no source of collection for the additional liabilities. The fact that the United States may obtain a judgment against the taxpayer for said unpaid tax liabilities is clearly inadequate where no source of collection exists. The nature of the employment tax liability

is such that the employees of the Saint Andrew Academy on the Sound are given credit on their annual income tax returns for amounts purportedly withheld from their wages and in some cases receive refunds and rebates. In other words, the United States is giving said employees credit for money that was never paid to the United States and in some cases paying money to said employees when, in fact, nothing is turned over to the United States.

DISCUSSION

Title 26 U.S.C., Section 7402(a) gives the District Courts of the United States broad equitable power to grant injunctions and such other orders and process "as may be necessary or appropriate for the enforcement of the internal revenue laws." United States v. First National City Bank, 379 U.S. 378 (1965).

The United States is clearly entitled to funds withheld from the wages of the employees of the Saint Andrew Academy (26 U.S.C., Sections 3102, 3402 and 7501). In view of the consistent failure to pay these taxes for the past six years, there is a probable danger that the right of the United States to these funds may be defeated without injunctive relief and since there is no source of collection for any additional liabilities which may be incurred, the United States would be irreparably damaged. The United States is in substantial need of protection and the damage to its rights in the absence of injunctive relief clearly outweigh any foreseeable harm to the defendant-taxpayer, Helen K. Tassop.

Moreover, it is clearly in the public interest to see that future employment taxes are promptly paid over to the United States.

All that is necessary for irreparable injury where a federal statute is being violated is that the plaintiff will suffer harm which cannot be repaired and such a showing is sufficient whereas here the only consequence of an injunction is that the defendant must effect a compliance with a statute which should have been done before. Studebaker Corp. v. Gittlin, 360 F. 2d 692 (C.A. 2, 1966); American Motorist Insurance Co. v. City Wide Transportation Co., 308 F. Supp. 1080, 1083 (SD N.Y., 1969).

With respect to the transfer or other disposition of the stock interest of Helen K. Tassop in Tassop Realty, and/or the potential transfer or other disposition of the real property owned by Tassop Realty, such a transfer could be accomplished during the course of this litigation as indicated in the Government's motion papers filed herein and such transfer or other disposition would defeat this Court's jurisdiction to foreclose the federal tax liens involved all to the irreparable injury of the United States. United States v. Pay-O-Matic Corp., 152 F. Supp. (SD N.Y., 1957).

It is anticipated that the taxpayer-defendant, Helen K. Tassop, will attempt to challenge the merits of the tax assessments specified in the Government's complaint. Although

the merits of said assessment are not a proper subject of inquiry in connection with the motion for a preliminary injunction, it is well established that the Commissioner's assessment is presumptively correct, United States v. Lorson Electric Co., 73-1 U.S.T.C. 9449 (C.A. 2, 1973) and the United States is entitled to the benefit of this presumption on motions as well as during the course of a trial. United States v. Mauro, 243 F. Supp. 413 (SD N.Y., 1965).

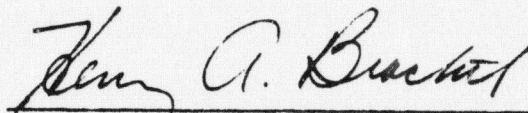
CONCLUSION

For the foregoing reasons, the Government's motion for a preliminary injunction should be granted in all respects.

Respectfully submitted,

DAVID G. TRAGER
United States Attorney

By:



Assistant United States Attorney

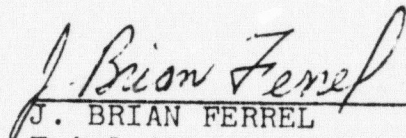
OF COUNSEL:

J. BRIAN FERREL
Trial Attorney, Tax Division
U.S. Department of Justice
Washington, D. C. 20530
Telephone: 202-739-3028

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that Service of the foregoing Memorandum of Law in Support of the Government's Motion for a Preliminary Injunction has this 12th day of September, 1975, been made by depositing a copy thereof, postage prepaid, in the United States mail addressed to:

Ms. Helen K. Tassop
c/o St. Andrew Academy on
the Sound
158-07 Riverside Drive
Beechhurst, New York 11357



J. BRIAN FERREL
Trial Attorney, Tax Division
U.S. Department of Justice
Washington, D. C. 20530

TEMPORARY RESTRAINING ORDER ON SEPTEMBER 12, 1975

(pp. 29a-32a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
 :
 UNITED STATES OF AMERICA,
 :
 Plaintiff
 :
 v.
 :
 HELEN K. TASSOP, d/b/a
 : ST. ANDREW ACADEMY ON THE
 : SOUND; TASSOP REALTY,
 : INC.; ASTORIA FEDERAL
 : SAVINGS & LOAN and M.
 : HOWARD LEIBOWITZ,
 :
 Defendants
 :
 ----- x

75C 1401

TEMPORARY RESTRAINING ORDER

✓ AND NOW this 9th day of September, 1975, at 1¹⁰ p.m.,
 it is hereby

T.R.
 ORDERED that the defendants, Helen K. Tassop and Tassop Realty, Inc., their agents, officers, servants, employees and attorneys and all persons in active concert or participation with them are hereby enjoined and restrained from selling, secreting, transferring, redeeming, negotiating, destroying, removing, encumbering, pledging, hypothecating or otherwise disposing of any and/or all stock owned by or for the defendant, Helen K. Tassop, in the corporate-defendant, Tassop Realty, Inc., and the corporate-defendant, Tassop Realty, Inc., is enjoined from transferring on its books or records title to any stock owned by or for the defendant, Helen K. Tassop, and from paying any dividends on said stock and it is further

ORDERED that the defendant, Tassop Realty, Inc., its agents, officers, servants, employees, attorneys and all persons in active concert or participation with it are hereby

enjoined and restrained from selling, transferring, encumbering or otherwise disposing of the real property more particularly described in paragraph XVI of the plaintiff's complaint and Exhibits D, D and E thereto, incorporated herein by reference and it is further

ORDERED that this Temporary Restraining Order will remain in effect for a period of ten (10) days after entry, unless within that time this order is extended for another ten (10) days for good cause shown or unless the defendants hereto consent that this order may be extended for a longer period, and it is further

ORDERED that WILLIAM MANCUSI and JOHN CLIFFORD are and each of them is specially appointed to serve process in this action and to serve copies of this Temporary Restraining Order upon each of the defendants.

In accordance with the requirements of Rule 65, Federal Rules of Civil Procedure the following are assigned as reasons for the issuance of the above order:

1. The act of filing a complaint in this case, which is contemporaneous with plaintiff's application for this order, will place the defendants, Helen K. Tassop and Tassop Realty, Inc., on notice that certain stock in the corporate-defendant, Tassop Realty, Inc., and certain real property titled in the name of the corporate defendant, Tassop Realty, Inc., is being sought for application to the unpaid tax liabilities alleged in plaintiff's complaint.

2. An affidavit of an Internal Revenue official which is attached to the plaintiff's application for this order discloses that the taxpayer, Helen K. Tassop, has been

uncooperative with the Government in its efforts to collect her unpaid tax liabilities.

3. If the stock owned by or for Helen K. Tassop in the corporate-defendant, Tassop Realty Inc., is sold or pledged to a third party who is without actual notice of the plaintiff's filed tax liens, the plaintiff would lose its enforceable tax liens on the stock and the third party would have a prior claim against the stock under Section 6323(b)(1) of the Internal Revenue Code of 1954 even though the instant action was filed before said transfer or pledge and she may dispose of the proceeds therefrom before the plaintiff can foreclose the tax liens thereon, to the irreparable damage of the plaintiff.

4. If the real property titled in the name of Tassop Realty, Inc. is sold, transferred, encumbered or otherwise disposed of by the corporate-defendant during the pendency of this matter, the proceeds could be disposed of before the plaintiff could foreclose its tax liens on the stock owned by or for Helen K. Tassop in the corporate-defendant and said stock interest would be of little or no value, all to the irreparable damage to the plaintiff.

5. The granting of this Temporary Restraining Order will merely preserve the status quo as to the assets involved herein and will in no way prejudice or harm the defendants pending a hearing at which the defendants, Helen K. Tassop and Tassop Realty, Inc., are ordered to show cause if

32a

- 4 -

any they have, why the preliminary relief requested by
the United States of America should be granted.


UNITED STATES DISTRICT JUDGE

APPLICATION OF DAVID G. TRAGER FOR TEMPORARY RESTRAINING
ORDER
(pp. 33a-36a)
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,
Plaintiffs

v.

HELEN K. TASSOP, d/b/a
ST. ANDREW ACADEMY ON THE
SOUND; TASSOP REALTY
INC.; ASTORIA FEDERAL
SAVINGS & LOAN and M.
HOWARD LEIBOWITZ,

Defendants
-----X

CIVIL ACTION NO.

75C 1481

APPLICATION FOR TEMPORARY
RESTRAINING ORDER

Comes now the United States of America, by its attorney, David G. Trager, and respectively moves this Court, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure for the issuance of a Temporary Restraining Order upon showing to the Court the following facts:

1. Federal tax assessments were made against the taxpayer-defendant, Helen K. Tassop, in the amount of \$239,802.16 for unpaid federal withholding taxes, Federal Insurance Contribution Act taxes, Federal Unemployment Tax Act taxes, penalties and interest for twenty-one (21) taxable quarters and periods beginning with the fourth quarter of 1969 through the fourth quarter of 1974 which assessments remain unpaid as more particularly set forth in paragraphs V and VII of the plaintiff's complaint and Exhibit A thereto which is incorporated herein by reference.

2. The taxpayer-defendant, Helen K. Tassop, has consistently failed over a period of many years to turn over to

the United States federal income taxes and Social Security payments withheld from the wages of her employees at The St. Andrew Academy on the Sound.

3. The St. Andrew Academy on the Sound is a private educational institution which is a sole proprietorship operated by Helen K. Tassop. It operates on premises titled in the name of Tassop Realty, Inc.

4. The stock of Tassop Realty, Inc., is owned entirely by the taxpayer-defendant, Helen K. Tassop.

5. It is the contention of the United States of America that the federal tax liens which arise by virtue of the assessments of federal taxes against the taxpayer, Helen K. Tassop, attach to her stock interest in the defendant, Tassop Realty, Inc. (26 U.S.C., Sections 6321 and 6322).

6. Said stock interest is readily and easily transferable by endorsement of the stock certificates.

7. By virtue of the provisions of 26 U.S.C., Section 6323(b)(1), the transfer of said stock to an innocent third party by the holder(s) thereof would defeat the jurisdiction of this Court to foreclose the federal tax liens against said stock interest.

8. A transfer of the stock certificates could be accomplished immediately and would irreparably harm the plaintiff, United States of America, in that such transfer would make it impossible for the United States of America to collect the taxes due and owing from the taxpayer-defendant, Helen K. Tassop.

9. In view of the consistent failure to pay the taxes in question and the nature of taxpayer's business operations there is reasonable cause to fear that the transfer of the

above-described stock certificates could take place before notice can be served and a hearing can be had on the plaintiff's motion for a preliminary injunction.

10. The real property owned by Tassop Realty, Inc. where the St. Andrew Academy is located, more particularly described in paragraph XVI of the plaintiff's complaint and Exhibits C, D and E thereto and which are incorporated herein by reference has a fair market value of approximately \$235,000 and is encumbered with mortgages in favor of the defendants Astoria Federal Savings and Loan and M. Howard Leibowitz more particularly described in paragraph XVIII of plaintiff's complaint and Exhibits F, G and H thereto, incorporated herein by reference which have a current total unpaid balance of approximately \$95,000.

11. Said real property more specifically described in the above paragraph could be sold, transferred or further encumbered during the pendency of this matter which actions would irreparably harm the plaintiff, United States of America, in that such actions would make it impossible for the United States of America to collect the taxes owing from the taxpayer-defendant, Helen K. Tassop in that said actions could render her stock interest in the corporate-defendant Tassop Realty, Inc. worthless.

In support of this application, the plaintiff refers the Court to the facts and averments contained in its complaint and the affidavit of Fred Hecht, Internal Revenue Service incorporated herein by reference.

WHEREFORE, plaintiff, United States of America, moves this Court:

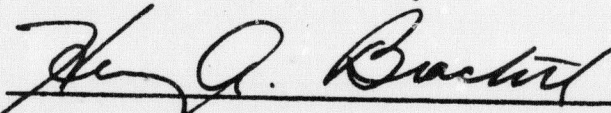
(a) To grant a temporary restraining order enjoining the defendant, Helen K. Tassop, from selling, secreting, transferring, redeeming, negotiating, destroying, removing, encumbering, pledging, hypothecating or otherwise disposing of any and/or all stock owned by or for the defendant, Helen K. Tassop, in the defendant corporation, Tassop Realty, Inc. and further moves the Court for an order restraining the corporate defendant, Tassop Realty, Inc., from transferring on its books or records title to any stock owned by or for the defendant, Helen K. Tassop, and from paying any dividends on said stock; and

(b) To grant a temporary restraining order enjoining and restraining the corporate-defendant, Tassop Realty, Inc., its officers, agents, servants, employees, attorneys and all persons in active concert with it from selling, transferring, encumbering, or otherwise disposing of the real property more particularly described in paragraph XVI of the plaintiff's complaint and Exhibits C, D and E thereto; and

(c) That a hearing be set at which the defendants shall be ordered to show cause, if any they have, why the preliminary relief requested by the United States of America should not be granted.

DAVID G. TRAGER
United States Attorney

By:



Assistant United States Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff

v.

HELEN K. TASSOP, d/b/a
ST. ANDREW ACADEMY ON THE
SOUND; TASSOP REALTY,
INC.; ASTORIA FEDERAL
SAVINGS & LOAN and M.
HOWARD LEIBOWITZ,

Defendants

75C 1481

CIVIL ACTION NO.

A F F I D A V I T

FRED HECHT, being duly sworn, deposes and says as follows:

1. That he is a Revenue Officer of the Internal Revenue Service duly appointed according to law and acting as such and that he has personal knowledge of the matters and facts set forth in this affidavit.

2. That assessments have been made against Helen K. Tassop for unpaid federal withholding, FICA and FUTA taxes for twenty-one taxable quarters and periods from the fourth quarter of 1969 to the fourth quarter of 1974 which remain unpaid and there is now due to the United States the entire assessed balance in the amount of \$239,802.16, plus interest.

3. That notices of federal tax liens with respect to the assessments against Helen K. Tassop were filed with the Register's office, Queens County, New York and the New York Secretary of State and nominee notices of federal tax liens were filed against Tassop Realty, Inc., with respect to said assessments with the Register's office, Queens County, New York and the New York Secretary of State.

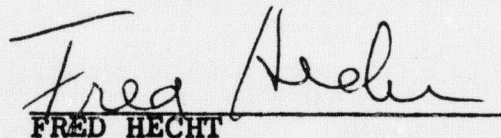
4. That he has been assigned to collect the tax liabilities of Helen K. Tassop and has been so engaged since approximately September, 1974.

5. The records and documents submitted to the Internal Revenue Service by the taxpayer, Helen K. Tassop, state that she owns 100 percent of the outstanding stock of Tassop Realty, Inc. The present location of the stock certificates which evidence this ownership interest is unknown, and the Internal Revenue Service has no way of giving actual notice of the outstanding federal tax liens on the stock to everyone to whom the stock might be sold or pledged.

6. That Helen K. Tassop has been uncooperative with Internal Revenue Service personnel in their efforts to collect her outstanding tax liabilities in that she has failed to file timely employment tax returns or pay a substantial portion of the taxes withheld from her employees' wages and is presently in arrears on the payment of withheld income and FICA taxes for the first and second quarters of 1975.

7. That the taxpayer, Helen K. Tassop, has no known distrainable assets other than the personal property used in the operation of St. Andrew Academy which personal property may not have a value in excess of \$10,000 and that the only known substantial asset of the taxpayer, Helen K. Tassop, is her stock interest in Tassop Realty, Inc.

8. That, if Helen K. Tassop's stock interest in Tassop Realty, Inc. is sold, pledged or otherwise disposed of to a third person who is without actual notice of the federal tax liens filed against Helen K. Tassop, the United States could lose its enforceable tax liens on the stock interest of Helen K. Tassop in Tassop Realty, Inc. and a third person would have a prior claim to the stock pursuant to the provisions of Section 6323(b)(1) of the Internal Revenue Code of 1954.


FRED HECHT

Sworn to and subscribed before me this 9th day of September, 1975.

Henry A. Brachtel

NOTARY PUBLIC

HENRY A. BRACHTL

Notary Public, State of New York
No. 31-0380825

Qualified in New York County
Commission Expires March 30, 1977

My Commission expires:

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION
(pp. 40a-45a)

40a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,
Plaintiff

v.

HELEN K. TASSOP, d/b/a
ST. ANDREW ACADEMY ON THE
SOUND; TASSOP REALTY,
INC.; ASTORIA FEDERAL
SAVINGS & LOAN and M.
HOWARD LEIBOWITZ,

Defendants
-----X

CIVIL ACTION NO.

75C 1481
MOTION FOR A PRELIMINARY
INJUNCTION

The United States of America, by its attorney, David G. Trager, United States Attorney for the Eastern District of New York respectively moves the Court pursuant to Rule 65(a) of the Federal Rules of Civil Procedure for the issuance of a preliminary injunction upon showing to the Court the following facts.

1. Federal tax assessments were made against the taxpayer-defendant, Helen K. Tassop, in the amount of \$239,802.16, for unpaid federal withholding taxes, Federal Insurance Contribution Act taxes, Federal Unemployment Tax Act taxes, penalties and interest for twenty-one taxable quarters and periods beginning with the fourth quarter of 1969 through the fourth quarter of 1974 which assessments remain unpaid as more particularly set forth in paragraphs V and VII of the plaintiff's complaint and Exhibit A thereto which is incorporated herein by reference.

2. The taxpayer-defendant, Helen K. Tassop, has consistently failed over a period of many years to turn over to

the United States federal income taxes and Social Security payments withheld from the wages of her employees at the St. Andrew Academy on the Sound and is currently in arrears in the payment of such taxes for the first and second quarters of 1975.

3. The St. Andrew Academy on the Sound is a private educational institution which is a sole proprietorship operated by Helen K. Tassop. It operates on premises titled in the name of Tassop Realty, Inc.

4. The stock interest in Tassop Realty, Inc., is owned entirely by the taxpayer-defendant, Helen K. Tassop.

5. It is the contention of the United States of America that the federal tax liens which arise by virtue of the assessments of federal taxes against the taxpayer, Helen K. Tassop, attach to her stock interest in the defendant, Tassop Realty, Inc., (26 U.S.C., Sections 6321 and 6322).

6. Said stock interest is readily and easily transferable by endorsement of the stock certificates.

7. By virtue of the provisions of 26 U.S.C., Section 6323(b)(1) the transfer of said stock to an innocent third party by the holder(s) thereof would defeat the jurisdiction of this Court to foreclose the federal tax liens against said stock interest.

8. The transfer of the stock certificates could be accomplished immediately and would irreparably harm the plaintiff, United States of America, in that such transfer would make it impossible for the United States of America to collect the taxes due and owing from the taxpayer-defendant, Helen K. Tassop.

- 3 -

9. In view of the consistent failure to pay the taxes in question and the nature of the taxpayer's business operations, there is reasonable cause to fear that the transfer of the above-described stock certificates could take place pending a determination of the issues in this case.

10. The real property owned by Tassop Realty, Inc. where the St. Andrew Academy is located, more particularly described in paragraph XVI of the plaintiff's complaint and Exhibits C, D and E thereto and which are incorporated herein by reference has a fair market value of approximately \$235,000 and is encumbered with mortgages in favor of the defendants Astoria Federal Savings and Loan and M. Howard Leibowitz more particularly described in paragraph XVII of plaintiff's complaint and Exhibits F, G and H thereto, incorporated herein by reference which have a current total unpaid balance of approximately \$95,000.

11. Said real property more specifically described in the above paragraph could be sold, transferred or further encumbered during the pendency of this matter which actions would irreparably harm the plaintiff, United States of America, in that such actions would make it impossible for the United States of America to collect the taxes owing from the taxpayer-defendant, Helen K. Tassop in that said actions could render her stock interest in the corporate-defendant Tassop Realty, Inc. worthless.

- 4 -

In support of this motion, the plaintiff respectively refers the Court to the facts and averments contained in its complaint and the affidavit of Fred Hecht, Internal Revenue Service attached to the Government's Application for a Temporary Restraining Order and incorporated herein by reference.

WHEREFORE, plaintiff, United States of America, moves this Court as follows:

1. To grant a mandatory injunction pending the determination of this suit, requiring the defendant, Helen K. Tassop, to pay over to the United States any and all federal income taxes and Federal Insurance Contribution Act taxes required to be withheld by her from the wages of the employees of St. Andrew Academy on the Sound as well as the school's share of said Federal Insurance Contribution Act taxes as follows:

- (a) To deposit any and all federal taxes so withheld or required to be paid over to the United States with a Federal Reserve Bank or an authorized commercial bank within three (3) banking days after the close of the Academy's payroll period (whether weekly, bi-weekly, semimonthly or otherwise);

- (b) To obtain a validated depository receipt from said Federal Reserve Bank or other authorized commercial bank;

(c) To exhibit each such receipt upon demand to an Internal Revenue Service collection officer assigned to verify that said deposits are being made as directed by this Court; and

(d) To file timely, quarterly withholding and FICA tax returns (Forms 941) and timely annual FUTA tax returns (Forms 940) with depository receipts attached.

2. To grant a preliminary injunction enjoining the defendants, Helen K. Tassop, Tassop Realty, Inc., their agents, officers, servants, employees and attorneys and all persons in active concert or participation with them from selling, secreting, transferring, redeeming, negotiating, destroying, removing, encumbering, pledging, hypothecating or otherwise disposing of any and/or all stock owned by or for the defendant, Helen K. Tassop, in the corporate-defendant, Tassop Realty, Inc., and restraining and enjoining the corporate-defendant, Tassop Realty, Inc., from transferring on its books or records, title to any stock owned by or for the defendant, Helen K. Tassop, and from paying any dividends on said stock.

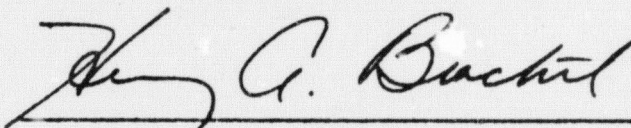
3. An order that each and every certificate of stock evidencing ownership by or for the defendant, Helen K. Tassop, in the corporate-defendant, Tassop Realty, Inc., be surrendered to the Clerk of this Court pending further order of this Court.

- 6 -

4. To grant a preliminary injunction enjoining the defendant, Tassop Realty, Inc. its officers, agents, servants, employees, attorneys and all persons in active concert or participation with it from selling, transferring, encumbering or otherwise disposing of the real property more particularly described in paragraph XVI of the plaintiff's complaint and Exhibit C, D and E thereto.

DAVID G. TRAGER
United States Attorney

By:



Assistant United States Attorney

OF COUNSEL:

J. BRIAN FERREL
Trial Attorney, Tax Division
U.S. Department of Justice
Washington, D. C. 20530
Telephone: 202-739-2997

ORDER OF JUDD, J. ENTERED SEPTEMBER 22,
1975 GRANTING PRELIMINARY INJUNCTION
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE (pp. 46a-49a)
U. S. DISTRICT COURT E.D. N.Y.

★ SEP 22 1975 ★

UNITED STATES OF AMERICA,

Plaintiff

v.

HELEN K. TASSOP, d/b/a
ST. ANDREW ACADEMY ON THE
SOUND; TASSOP REALTY, INC.;
ASTORIA FEDERAL SAVINGS AND
LOAN ASSOCIATION; and
M. HOWARD LEIBOWITZ,

Defendants

CIVIL ACTION NO. 75C1481

ORDER GRANTING PRELIMINARY
INJUNCTION

AND NOW this 19th day of September, 1975 it is

hereby

OSJ
is and as long as the United States refers for action under paragraph 5 hereof,
ORDERED that pending a final determination of this action,
the defendant, Helen K. Tassop, shall pay over to the United
States of America, any and all federal income taxes and
FICA taxes required to be withheld by her from the wages of
the employees of St. Andrew Academy and the Academy's share
of said FICA taxes as follows:

(a) To deposit any and all federal taxes so
withheld with a federal reserve bank or an authorized
commercial bank within three (3) banking days
after the close of the Academy's payroll period
(whether weekly, bi-weekly, semimonthly, or otherwise);

(b) To obtain a validated depository receipt
from said federal reserve bank or other authorized
commercial bank;

(c) To exhibit each such receipt upon demand to
an Internal Revenue Service collection officer assigned
to verify that said deposits are being made as directed
by this order; and

(d) To file timely quarterly withholding and FICA tax returns (Forms 941) and timely annual FUTA tax returns (Form 940) with depository receipts attached, and it is further

ORDERED that the defendants, Helen K. Tassop and Tassop Realty, Inc., their agents, officers, servants, employees and attorneys and all persons in active concert or participation with them are hereby enjoined and restrained from selling, secreting, transferring, redeeming, negotiating, destroying, removing, encumbering, pledging, hypothecating, or otherwise disposing of any and/or all stock owned by or for the defendant, Helen K. Tassop, in the corporate-defendant, Tassop Realty, Inc., and the corporate-defendant, Tassop Realty, Inc., is hereby enjoined and restrained from transferring on its books or records title to any stock owned by or for the defendant, Helen K. Tassop and from paying any dividends on said stock, and it is further

ORDERED that each and every certificate of stock evidencing ownership by or for the defendant, Helen K. Tassop, in the corporate-defendant, Tassop Realty, Inc., be surrendered to the Clerk of this Court within 10 days pending further order of this Court; and it is further

ORDERED that the defendant, Tassop Realty, Inc., its agents, officers, servants, employees, attorneys and all persons in active concert or participation with it are hereby

- 3 -

enjoined and restrained from selling, transferring, encumbering or otherwise disposing of the real property more particularly described in paragraph XVI of the plaintiff's complaint and Exhibits C, D and E thereto, incorporated herein by reference.

In accordance with the requirements of Rule 65, Federal Rules of Civil Procedure the following are assigned as reasons for the issuance of the above order:

1. The act of filing a complaint in this case, will place the defendants, Helen K. Tassop and Tassop Realty, Inc., on notice that certain stock in the corporate-defendant, Tassop Realty, Inc., and certain real property titled in the name of the corporate-defendant, Tassop Realty, Inc., is being sought for application to the unpaid tax liabilities alleged in plaintiff's complaint.

2. An affidavit of an Internal Revenue official which is attached to the plaintiff's application for a temporary restraining order discloses that the taxpayer, Helen K. Tassop, has been uncooperative with the Government in its efforts to collect her unpaid tax liabilities.

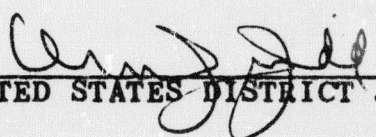
3. If the stock owned by or for Helen K. Tassop in the corporate-defendant, Tassop Realty, Inc., is sold or pledged to a third party who is without actual notice of the plaintiff's filed tax liens, the plaintiff would lose its enforceable tax liens on the stock and the third party would have a prior claim against the stock under Section 6323(b)(1) of the Internal Revenue Code of 1954 even though the instant action was filed

- 4 -

before said transfer or pledge and she may dispose of the proceeds therefrom before the plaintiff can foreclose the tax liens thereon, to the irreparable damage of the plaintiff.

4. If the real property titled in the name of Tassop Realty, Inc. is sold, transferred, encumbered or otherwise disposed of by the corporate-defendant during the pendency of this matter, the proceeds could be disposed of before the plaintiff could foreclose its tax liens on the stock owned by or for Helen K. Tassop in the corporate-defendant and said stock interest would be of little or no value, all to the irreparable damage to the plaintiff.

5. If the defendant, Helen K. Tassop, does not stay current on the payment of federal income taxes and FICA taxes withheld by her from the wages of the employees of the St. Andrew Academy, the Internal Revenue Service will take summary administrative collection action against the Academy which could result in the cessation of the Academy's operations during the course of the school year to the detriment of over 500 students enrolled at the Academy as well as to the teachers and employees of the Academy.


UNITED STATES DISTRICT JUDGE

ANSWER OF ASTORIA FEDERAL SAVINGS & LOAN
ASSOCIATION TO COMPLAINT (pp.50a-52a)
(Filed September 29, 1975)
UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

Plaintiff,

-against-

HELEN K. TASSOP, d/b/a ST. ANDREW
ACADEMY ON THE SOUND; TASSOP
REALTY, INC.; ASTORIA FEDERAL
SAVINGS AND LOAN ASSOCIATION; and
M. HOWARD LEIBOWITZ,

Defendants.
-----x

The defendant, ASTORIA FEDERAL SAVINGS AND LOAN ASSOCIATION,
by its attorney, WILLIAM M. THOMAS, answering the complaint, alleges
and shows to the Court:

1. Denies that it has knowledge or information thereof sufficient to form
a belief as to the paragraphs of the complaint numbered I, II, III, IV (a),
IV (b), IV (d), V, VI, VII, VIII, IX, XI, XII, XIII, XIV and XV.
2. Denies Paragraph IV (c) of the complaint except admits that the
defendant ASTORIA FEDERAL SAVINGS AND LOAN ASSOCIATION is the
successor by merger with METROPOLITAN SAVINGS AND LOAN
ASSOCIATION; that it is a federally chartered savings and loan association
having its principal place of business at 37-16 30th Avenue, Long Island
City, New York 11103 and that it is within the jurisdiction of this Court.
3. Denies that it has knowledge or information thereof sufficient to form
a belief as to the paragraph of the complaint numbered XVI (b) except that
on information and belief, alleges that on or about December 21, 1964
TASSOP REALTY INC. was the owner in fee of real property located at
157-50 9th Avenue, Beechhurst, New York and more particularly described
in Exhibit "G" attached to and incorporated in the complaint.

50a
FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ SEP 29 1975 ★
TIME A.M. 10/1
P.M. _____

CIVIL ACTION
FILE NO. 75 C 1481

4. Denies that it has knowledge or information thereof sufficient to form a belief as to the paragraph of the complaint numbered XVI (b) except that on information and belief, alleges that on or about December 21, 1964 TASSOP REALTY INC. was the owner in fee of real property located at 158-07 Riverside Drive, Beechhurst, New York and more particularly described in Exhibit "G" attached to and incorporated in the complaint.

5. Denies that it has knowledge or information thereof sufficient to form a belief as to the paragraph numbered XVII in the complaint except admits that the defendant ASTORIA FEDERAL SAVINGS AND LOAN ASSOCIATION is the owner and holder of two mortgages made, executed and delivered by TASSOP REALTY INC. on the premises described in said complaint to the defendant's predecessor in interest, METROPOLITAN SAVINGS AND LOAN ASSOCIATION, to secure the payment of a bond or note executed simultaneously therewith in the sum of \$50,000.00 and interest and another bond or note executed simultaneously in the sum of \$30,000.00 and interest conditioned to be paid in installments as therein stated. Mortgages were recorded in the office of the Register of the County of Queens in Liber 8546 at page 364 and page 368 on the 28th day of December, 1964 and alleges that the unpaid balance on each of said mortgages presently held by the defendant ASTORIA FEDERAL SAVINGS AND LOAN ASSOCIATION with interest thereon is each a prior lien on the respective premises to said amount.

AS A FIRST SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE

6. That the complaint fails to state a cause of action against the defendant ASTORIA FEDERAL SAVINGS AND LOAN ASSOCIATION.

157-50 7th Avenue, New York, New York and more particularly described

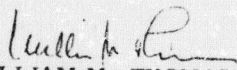
AS A SECOND SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE

7. That heretofore and on or about December 21, 1964 TASSOP REALTY INC. made, executed and delivered two mortgages on the respective premises described in paragraph XVI of the complaint to defendant's predecessor in interest, METROPOLITAN SAVINGS AND LOAN ASSOCIATION, to secure the payment by said TASSOP REALTY INC. of bonds or notes in the sum of \$50,000.00 and \$30,000.00 respectively and interest conditioned to be paid in installments as therein stated, which mortgages were each recorded in the office of the Register of the County of Queens in Liber 8546 at pages 364 and 368 on the 28th day of December, 1964.

8. That the unpaid balance of each of said mortgages presently held by the defendant ASTORIA FEDERAL SAVINGS AND LOAN ASSOCIATION with interest thereon is each a prior lien on the respective premises to said amount.

WHEREFORE, the defendant ASTORIA FEDERAL SAVINGS AND LOAN ASSOCIATION prays for judgment dismissing the complaint or in the alternative, that any sale or other transfer or conveyance of the premises which are the subject of either of defendant's mortgages be decreed to be sold according to law subject to the lien of the said prior mortgage to ASTORIA FEDERAL SAVINGS AND LOAN ASSOCIATION, together with the costs and disbursements of this action.

Dated: September 24, 1975


WILLIAM M. THOMAS
Attorney for Defendant
Astoria Federal Savings and Loan
Association
c/o Thomas and Graham, P. C.
36-17 30th Avenue
Long Island City, N. Y. 11103
932 - 6900

To: DAVID G. TRAGER
United States Attorney
Attorney for U. S. A.
U. S. Courthouse, 225 Cadman Plaza East
Brooklyn, New York 11201

ANSWER OF M. HOWARD LEIBOWITZ TO COMPLAINT
(Filed October 1, 1975)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

UNITED STATES OF AMERICA

★ OCT 1 1975 ★

Plaintiff

TIME A.M.

P.M.

7

75C-1481

HELEN K. TASSOP, d/b/a ST. ANDREW ACADEMY ON
THE SOUND, TASSOP REALTY, INC., ASTORIA FEDERAL
SAVINGS AND LOAN ASSOCIATION and M. HOWARD LEIBOWITZ,

Defendants.

Defendant, M. Howard Leibowitz, appearing personally
herein and answering the Complaint herein alleges:

1. Denies that he has sufficient information and knowledge to form a belief as to the allegations set forth in paragraphs in Count 1 and 2 of the Complaint designated as "III", "V", "VI", "VII", "VIII", "IX" and in Count 2 "X", "XI", "XII", "XIII", "XIV" and "XV".
2. For an affirmative defense herein, the said defendant alleges; That he owns the second mortgages on the property located at 158-07 Riverside Dr., Beechhurst, New York and 157-50 Ninth Avenue, Beechhurst, N.Y., which are duly recorded in the Register's Office of Queens County, N.Y., on which there is the sum of \$52000.00 due with interest.

Whereof said Defendant prays relief as is just and proper herein.

M. Howard Leibowitz
M. HOWARD LEIBOWITZ
Defendant in person
341 West 24th Street
New York, N.Y., 10011

STIPULATION OF OCTOBER 2, 1975 EXTENDING TIME
TO ANSWER

54a

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA,
Plaintiff,

-against-

HELEN K. TASSOP, d/b/a ST. ANDREW ACADEMY ON
THE SOUND; TASSOP REALTY, INC.; ASTORIA
FEDERAL SAVINGS AND LOAN ASSOCIATION; and
M. HOWARD LEIBOWITZ,
Defendants
----- X

Civil Action File No. 75C 1481

Stipulation Extending Time to
Answer

IT IS HEREBY STIPULATED by and between counsel for the Defendants,
HELEN K. TASSOP, d/b/a ST. ANDREW ACADEMY ON THE SOUND, and TASSOP REALTY, INC.
and counsel for the Plaintiff, UNITED STATES OF AMERICA, that the time for the
Defendants to appear and to answer, amend or supplement the answer as of course
or to make any motion with relation to the complaint in this action be and the
same hereby is extended to and including the 17th day of October 1975

Dated: October 2, 1975

Arthur J. Teichberg
ARTHUR J. TEICHBERG
Attorney for Defendants

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

David G. Trager
BY: _____
Assistant United States Att

So Ordered, *October 2, 1975*
David G. Trager

NOTICE TO TAKE ORAL DEPOSITION OF HELEN K. TASSOP
SERVED OCTOBER 1, 1975

55a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
: UNITED STATES OF AMERICA, :
: Plaintiff :
: v. : CIVIL ACTION NO. 75-C-1481
: HELEN K. TASSOP, et al., : NOTICE TO TAKE ORAL
: Defendants : DEPOSITIONS
: ----- x

TO: Helen K. Tassop & Tassop Realty, Inc.
c/o St. Andrew Academy on the Sound
158-07 Riverside Drive
Beechhurst, New York 11357

M. Howard Leibowitz, Esquire
341 West 24th Street
New York City, New York

Astoria Federal Savings & Loan Assn.
75-25 Metropolitan Avenue
Middle Village, Queens, New York

PLEASE TAKE NOTICE that on Tuesday, November 4, 1975
beginning at 2:00 p.m., the plaintiff, United States of
America will take, pursuant to Rules 30 and 30(b)(6) of the
Federal Rules of Civil Procedure, the depositions upon oral
examination of Helen K. Tassop d/b/a St. Andrew Academy on
the Sound and Tassop Realty, Co., Inc., at the Office of
the United States Attorney, Room G-80, ground floor, United
States Court House, Brooklyn, New York, before a Notary
Public or before some other officer authorized by law to
administer oaths. The oral examination will continue from
day to day until completed. You are invited to attend and
take such part in the examination as you deem advisable.

DAVID G. TRAGER
United States Attorney

By:

OF COUNSEL:

J. BRIAN FERREL
Trial Attorney, Tax Division
U.S. Department of Justice
Washington, D. C. 20530

Assistant United States Attorney

PLAINTIFF'S NOTICE TO PRODUCE DOCUMENTS SERVED
OCTOBER 1, 1975 (pp. 56a-58a)
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

56a

- - - - - x

UNITED STATES OF AMERICA,	:	
Plaintiff	:	CIVIL ACTION NO 75-C-1481
v.	:	<u>NOTICE TO PRODUCE</u>
HELEN K. TASSOP, et al.,	:	
Defendants	:	

- - - - - x

TO: Ms. Helen K. Tassop
c/o St. Andrew Academy on the Sound
158-07 Riverside Drive
Beechhurst, New York 11357

Tassop Realty, Inc.
158-07 Riverside Drive
Beechhurst, New York 11357

The plaintiff, the United States of America, hereby requests pursuant to Rule 34 of the Federal Rules of Civil Procedure that the defendants, Helen K. Tassop and Tassop Realty, produce and permit the plaintiff to inspect and to copy each of the documents specified hereinafter.

As used herein, the term "documents" includes the original and any nonidentical copy (which is different from the original because of notations on such copy, dissimilar dates on such copy or otherwise) and means any and all tangible things and documents whether handwritten, typed, printed, or otherwise visually reproduced, including but not limited to, all correspondence, letters, telegrams, teletype messages, contracts (including drafts, proposals and any and all exhibits thereto, drafts, minutes and agendas), leases, memoranda (including pencil jottings, diary or log entries, desk calendar entries, reported recollections and

any other written form of notation of events or intentions), transcripts and recordings of conversations and telephone calls, books, records, photographs, reports, tabulations, charts, books of account, ledgers, invoices, travel reports, financial statements, receipts, canceled checks and all other documentary material of any nature whatever, together with any attachments thereto or enclosures therewith. Please bring with you:

1. All documents as defined above in the files or control of the defendant Helen K. Tassop or St. Andrew Academy on the Sound, their agents, servants, representatives or employees received from the Internal Revenue Service, its agents, servants or employees from January 1, 1972 thru August 31, 1975 which in any way relate, refer or pertain to the assessments and notices and demand asserted by the plaintiff, the United States of America, in paragraph V and Exhibit A thereto of its complaint in the above-referenced action.

2. All documents as defined above in the files or control of the defendant Helen K. Tassop or St. Andrew Academy on the Sound which relate, refer, pertain or indicate in any way that said defendant, her agents, servants, representatives or employees paid the tax liabilities asserted to be due the plaintiff, the United States of America in paragraph V and Exhibit A thereto of its complaint and paragraph VII of its complaint.

3. The defendant's copies of the employment tax returns (Forms 941 and 940) for the 21 taxable periods and quarters described in paragraph V and Exhibit A thereto of the plaintiff's complaint filed herein.

4. All documents as defined above in the files or control of the defendant Helen K. Tassop or St. Andrew Academy on the Sound, their agents, servants, representatives or employees which relate, refer to or any way pertain to the activities and whereabouts of Helen K. Tassop on May 18, 1972.

5. All documents as defined above including books of account and business records of the defendant Helen K. Tassop and/or St. Andrew Academy on the Sound, which relate, refer or pertain in any way to the lease or other arrangements whereby the St. Andrew Academy on the Sound occupies the premises located at 158-07 Riverside Drive, Lots 1 and 7 and the property located at 157-50 9th Avenue, Beechhurst, New York all as more particularly described in paragraph XVI of the plaintiff's complaint.

6. All documents, as defined above including corporate books of account and corporate records of Tassop Realty, Inc. which refer, relate or pertain in any way to the receipts and disbursements of Tassop Realty and Helen K. Tassop d/b/a St. Andrew Academy on the Sound for the past five years.

It is requested that the aforesaid production be made on the 4th day of November, 1975 at 10:00 a.m. at the Office of the United States Attorney, Room G-80, United States Court House, Brooklyn, New York. Inspection will be made by plaintiff's attorneys and will continue from day to day until completed. Thereafter, the deposition of Helen K. Tassop will be taken as contemporaneously noticed herewith.

DAVID G. TRAGER
United States Attorney

By: _____

OF COUNSEL:

J. BRIAN FERREL
Trial Attorney
Tax Division
U.S. Department of Justice
Washington, D. C. 20530

Assistant United States Attorney

ANSWER OF HELEN K. TASSOP D/B/A ST. ANDREW ACADEMY
ON THE SOUND AND TASSOP REALTY, INC. TO COMPLAINT
UNITED STATES DISTRICT COURT (pp. 59a-62a)
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

Civil Action File No. 75C 1481

-against-

ANSWER

HELEN K. TASSOP, d/b/a ST. ANDREW ACADEMY
ON THE SOUND; TASSOP REALTY, INC.; ASTORIA
FEDERAL SAVINGS AND LOAN ASSOCIATION; and
M. HOWARD LEIBOWITZ,
Defendants

Defendant, HELEN K. TASSOP, d/b/a ST. ANDREW ACADEMY ON THE SOUND;
and TASSOP REALTY, INC. by its attorney, ARTHUR J. TEICHBERG, as and for its
answer to the Plaintiff's complaint, respectfully alleges as follows:

COUNT 1

I.

Admits the allegations in paragraph I.

II.

Denies knowledge or information sufficient to form a belief that
this action was commenced with the authorization and at the request of the
Chief Counsel, Internal Revenue Service, and with respect to each and every
remaining allegation in paragraph II neither admits or denies, since they
contain no allegations of fact.

III.

The allegations of paragraph III of the complaint can neither be admitted nor denied since they present questions of law which are respectfully referred to the Court.

IV.

Admits the allegations contained in paragraph IV (a) and (b). Denies that it has knowledge and information thereof sufficient to form a belief as to paragraph IV (c) and (d).

V.

Defendant admits that a delegate of the Secretary of Treasury of the United States made assessments against the Defendant as alleged, and admits the correctness of the amounts set forth in Exhibit A which is attached to the Complaint, but reserves the right to prove at the trial of this action all payments that have been made and will be made by it with respect to said taxes and begs leave to review the correctness of computations on all returns filed.

VI.

Defendant denies that notice of assessment and demands for payment were made on the dates set forth in Exhibit A which is attached to the Complaint.

61a

VII.

Admits the allegation of paragraph VII with respect to the correctness of the amounts set forth but reserves the right to prove at the trial of this action all payments that have been made and will be made by it with respect to said taxes and begs leave to review the correctness of computations on all returns filed. Denies that Plaintiff made demand for payments on May 16, 1972 and August 2, 1972. Admits that Plaintiff made demand for payment at all other times specified in Exhibit A.

VIII.

Admits the allegations of paragraph VIII, but reserves the right to prove at the trial of this action all payments that were made and that will be made by it with respect to said taxes.

IX.

Denies each and every allegation in paragraph IX of the complaint and affirmatively states that she intends to pay all taxes owed by her under the laws of the United States.

X.

In answer to paragraph X of the complaint, Defendant repeats and realleges the answers set forth in paragraphs I - IX of this complaint as of separately set forth at length herein.

Paragraph I - IX

XI.

The allegations of paragraph XI of the complaint can neither be admitted nor denied since they present questions of law which are respectfully referred to the Court.

XII.

Admits the allegations contained in paragraph XII.

XIII.- XIV.

Admits the allegations in paragraphs XIII and XIV.

XV.

Denies each and every allegation in paragraph XV of the complaint.

XVI.

Admits the allegations in paragraph XVI of the complaint.

WHEREFORE, the Defendant, HELEN K. TASSOP d/b/a ST. ANDREW ACADEMY ON THE SOUND and TASSOP REALTY, INC. respectfully requests that the complaint be dismissed and that a judgment be entered in favor of Defendant for costs.

ARTHUR J. TEICHBERG
Attorney for Defendant
HELEN K. TASSOP d/b/a ST. ANDREW
ACADEMY ON THE SOUND and TASSOP
REALTY, INC.
370 Lexington Avenue
New York, New York 10017
212-725-8544

Arthur J. Teichberg

DEFENDANT HELEN K. TASSOP D/B/A ST. ANDREW ACADEMY ON
THE SOUND REQUEST TO PRODUCE DOCUMENTS (pp. 63a-65a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X	
UNITED STATES OF AMERICA,	:
	:
Plaintiff,	:
	:
-against-	: <u>REQUEST TO PRODUCE</u>
	:
HELEN K. TASSOP, d/b/a ST.	: Civil Action No. 75C1481
ANDREW ACADEMY ON THE SOUND,	:
ET AL.,	:
	:
Defendants.	:
-----X	

The defendant, HELEN K. TASSOP, d/b/a ST. ANDREW ACADEMY ON THE SOUND, hereby requests, pursuant to Rule 34 of the Federal Rules of Civil Procedure that plaintiff produce and permit defendant to inspect and to copy each of the following documents:

1. A copy of any and all notices and demand for payment of assessments allegedly given to the defendant, HELEN K. TASSOP, on the 18th day of May, 1972.
2. A copy of any and all notices and demand for payment of assessments allegedly given to the defendant, HELEN K. TASSOP on the 11th day of August, 1972.
3. All correspondence between the plaintiff and the defendant, HELEN K. TASSOP, including but not limited to all letters, notices and writings sent by the

(121)

defendant HELEN K. TASSOP to the plaintiff and all letters, notices and writings sent by the plaintiff to the defendants TASSOP REALTY CORP., and HELEN K. TASSOP.

4. Financial data showing application of all monies paid by or on behalf of the defendant, HELEN K. TASSOP.

5. A record of all property and monies formerly owned by HELEN K. TASSOP that was seized by the plaintiff and financial records showing application of proceeds of said seized property.

6. All records of taxpayer's contact with Revenue Officer Lapidus.

7. Daily time records and/or reports of Revenue Officer Lapidus for the months of May, 1972 and August, 1972.

8. Personnel file for Revenue Officer, Lapidus.

9. All files in possession of the plaintiff pertaining to the tax liability of the defendant, HELEN K. TASSOP, which is the subject of this litigation.

It is requested that the aforesaid production be made on the 21st day of January, 1976 at 10:00 o'clock in the forenoon at the United States District Courthouse, for the Eastern District of New York located at 225 Cadman Plaza East,

Brooklyn, New York. Inspection will be made by the attorney
for the defendant HELEN K. TASSOP.

TO: DAVID G. TRAEGER, ESQ.
225 Cadman Plaza East
Brooklyn, New York

J. BRIAN FERREL
Trial Attorney, Tax Division
U. S. Department of Justice
Washington, D. C. 20530

PETER R. NEWMAN, ESQ.
Attorney for defendant
HELEN K. TASSOP
Office and P. O. Address
170 Old Country Road
Mineola, New York 11501

NOTICE TO TAKE DEPOSITION OF PLAINTIFF BY LOUIS SCOTTI
(Dated December 17, 1975)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

Plaintiff,

-against-

HELEN K. TASSOP, d/b/a ST.
ANDREW ACADEMY ON THE SOUND, et
al.,

Defendants.
-----X

:
:
:
: NOTICE TO TAKE DEPOSITION
ON ORAL EXAMINATION

: Civil Action No. 75C1481
:
:

Pursuant to Rule 30 of the Federal Rules of Civil Procedure, we hereby give you notice as attorney for the defendant, HELEN K. TASSOP, d/b/a ST. ANDREW ACADEMY ON THE SOUND, in the above entitled cause that a deposition upon oral examination shall be taken at the United States District Court-house, in the Eastern District, County of Kings, State of New York on the 22nd day of January, 1976, at 2:00 o'clock in the afternoon of the plaintiff by LOUIS SCOTTI.

Dated: at City of Mineola, County of Nassau, State of New York
this 17th day of December, 1975.

TO: DAVID G. TRAEGER, ESQ.
225 Cadman Plaza East
Brooklyn, New York

J. BRIAN FERREL
Trial Attorney, Tax Division
U. S. Department of Justice
Washington, D. C. 20530

PETER R. NEWMAN, ESQ
Attorney for defendant
HELEN K. TASSOP
170 Old Country Road
Mineola, New York 11501

NOTICE TO TAKE DEPOSITION OF PLAINTIFF BY RAYMOND P. KEEN
(Dated December 17, 1975)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x	
UNITED STATES OF AMERICA,	:
	:
Plaintiff,	:
	:
-against-	:
	:
HELEN K. TASSOP, d/b/a ST.	:
ANDREW ACADEMY ON THE SOUND, et	:
al.,	:
	:
Defendants.	:
-----x	

NOTICE TO TAKE DEPOSITION
ON ORAL EXAMINATION

Civil Action No. 75Cl481

Pursuant to Rule 30 of the Federal Rules of Civil Procedure, we hereby give you notice as attorney for the defendant, HELEN K. TASSOP, d/b/a ST. ANDREW ACADEMY ON THE SOUND, in the above entitled cause that a deposition upon oral examination shall be taken at the United States District Court-house, in the Eastern District, County of Kings, State of New York on the 22nd day of January, 1976, at 2:00 o'clock in the afternoon of plaintiff by RAYMOND P. KEEN, CHIEF COLLECTION DIVISION

Dated: at City of Mineola, County of Nassau, State of New York
this 17th day of December, 1975.

TO: DAVID G. TRAEGER, ESQ.
225 Cadman Plaza East
Brooklyn, New York

J. BRIAN FERREL
Trial Attorney, Tax Division
U. S. Department of Justice
Washington, D. C. 20530

PETER R. NEWMAN, ESQ.
Attorney for defendant
HELEN K. TASSOP
170 Old Country Road
Mineola, New York 11501

NOTICE TO TAKE DEPOSITION OF PLAINTIFF BY LAPIDUS
(Dated December 17, 1975)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :

Plaintiff, :

-against- :

HELEN K. TASSOP, d/b/a ST.
ANDREW ACADEMY ON THE SOUND, et
al., :

Defendants. :
-----X

NOTICE TO TAKE DEPOSITION
ON ORAL EXAMINATION

Civil Action No. 75C1481

Pursuant to Rule 30 of the Federal Rules of Civil Procedure, we hereby give you notice as attorney for the defendant, HELEN K. TASSOP, d/b/a ST. ANDREW ACADEMY ON THE SOUND, in the above entitled cause that a deposition upon oral examination shall be taken at the United States District Court-house, in the Eastern District, County of Kings, State of New York on the 22nd day of January, 1976, at 2:00 o'clock in the afternoon of the plaintiff by REVENUE OFFICER, LAPIDUS.

Dated: at City of Mineola, County of Nassau, State of New York
this 17th day of December, 1975.

TO: DAVID G. TRAEGER, ESQ.
225 Cadman Plaza East
Brooklyn, New York

J. BRIAN FERREL
Trial Attorney, Tax Division
U. S. Department of Justice
Washington, D. C. 20530

PETER R. NEWMAN, ESQ.
Attorney for defendant
HELEN K. TASSOP
170 Old Country Road
Mineola, New York 11501

NOTICE TO TAKE DEPOSITION OF PLAINTIFF BY FRED HECHT
(Dated December 17, 1975)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :

Plaintiff, :

-against- :

HELEN K. TASSOP, d/b/a ST.
ANDREW ACADEMY ON THE SOUND, et
al., :

Defendants. :
-----X

NOTICE TO TAKE DEPOSITION
ON ORAL EXAMINATION

Civil Action No. 75Cl431

Pursuant to Rule 30 of the Federal Rules of Civil Procedure, we hereby give you notice as attorney for the defendant, HELEN K. TASSOP, d/b/a ST. ANDREW ACADEMY ON THE SOUND, in the above entitled cause that a deposition upon oral examination shall be taken at the United States District Court-house, in the Eastern District, County of Kings, State of New York on the 22nd day of January, 1976, at 2:00 o'clock in the afternoon of the plaintiff by REVENUE OFFICER, FRED HECHT.

Dated: at City of Mineola, County of Nassau, State of New York
this 17th day of December, 1975.

TO: DAVID G. TRAEGER, ESQ.
225 Cadman Plaza East
Brooklyn, New York

J. BRIAN FERREL
Trial Attorney, Tax Division
U. S. Department of Justice
Washington, D. C. 20530

PETER R. NEWMAN, ESQ.
Attorney for defendant
HELEN K. TASSOP
170 Old Country Road
Mineola, New York 11501

NOTICE TO TAKE DEPOSITION OF PLAINTIFF BY DESPOLA
(Dated December 17, 1975)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X	
UNITED STATES OF AMERICA,	:
	:
Plaintiff,	:
	:
-against-	:
	:
HELEN K. TASSOP, d/b/a ST.	:
ANDREW ACADEMY ON THE SOUND, et	:
al.,	:
	:
Defendants.	:
-----X	

NOTICE TO TAKE DEPOSITION
ON ORAL EXAMINATION

Civil Action No. 75C1481

Pursuant to Rule 30 of the Federal Rules of Civil Procedure, we hereby give you notice as attorney for the defendant, HELEN K. TASSOP, d/b/a ST. ANDREW ACADEMY ON THE SOUND, in the above entitled cause that a deposition upon oral examination shall be taken at the United States District Court-house, in the Eastern District, County of Kings, State of New York on the 22nd day of January, 1976, at 2:00 o'clock in the afternoon of the plaintiff by REVENUE OFFICER, NESPOLA.

Dated: at City of Mineola, County of Nassau, State of New York
this 17th day of December, 1975.

TO: DAVID G. TRAEGER, ESQ.
225 Cadman Plaza East
Brooklyn, New York

J. BRIAN FERREL
Trial Attorney, Tax Division
U. S. Department of Justice
Washington, D. C. 20530

PETER R. NEWMAN, ESQ.
Attorney for defendant
HELEN K. TASSOP
170 Old Country Road
Mineola, New York 11501

1-23-76
Judd, J.

PLAINTIFF'S NOTICE OF MOTION DATED JANUARY 13, 1976 71a
FOR ORDER COMPELLING PRODUCTION OF DOCUMENTS
(Filed January 19, 1976)
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA, :

Plaintiff :

v. :

HELEN K. TASSOP, et al., :

Defendants :

----- x

CIVIL ACTION NO. 75-C-1481

NOTICE OF MOTION

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ JAN 19 1976 ★

TIME AM
P.M.

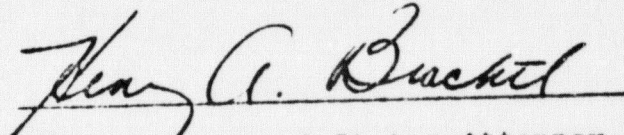
TO: Peter R. Newman, Esquire
170 Old Country Road
Mineola, New York 11501

PLEASE TAKE NOTICE that on January 23, 1976 at
10:00 o'clock in the forenoon or as soon thereafter as
counsel may be heard, counsel for the plaintiff, United
States of America, will move the Court at the United
States Courthouse, Brooklyn, New York pursuant to Rule
37 of the Federal Rules of Civil Procedure for an Order
compelling production of documents and responses to
questions on oral examination.

DATE: January 13, 1976.

DAVID G. TRAGER
United States Attorney

By:


Assistant United States Attorney

PLAINTIFF'S RESPONSE FIXED JANUARY 26, 1976 TO
 REQUEST FOR PRODUCTION OF DOCUMENTS
 UNITED STATES DISTRICT COURT (Filed January 26, 1976)
 EASTERN DISTRICT OF NEW YORK (pp. 72a-77a)

----- x

UNITED STATES OF AMERICA, :

Plaintiff :

CIVIL ACTION NO. 75-C-1481

v. :

HELEN K. TASSOP, d/b/a
 ST. ANDREW ACADEMY ON THE
 SOUND, et al.,

Defendants

PLAINTIFF'S RESPONSE TO
 REQUEST FOR THE
 PRODUCTION OF DOCUMENTS

FILED
 U.S. DISTRICT COURT
 EASTERN DISTRICT OF NEW YORK
 JAN 26 1976

----- x

The plaintiff, the United States of America, by its attorney, David G. Trager, United States Attorney for the Eastern District of New York, in response to the defendant's request for production of documents states:

1. A copy of any and all notices and demand for payment of assessments allegedly given to the defendant, Helen K. Tassop, on the 18th day of May, 1972.

As previously advised, the interim notice(s) and demand for payment of assessments given to the defendant, Helen K. Tassop on the 18th day of May, 1972 has been lost or destroyed. A reasonable facsimile of the form used to give said notice(s) and demand on May 18, 1972 is attached hereto.

2. A copy of any and all notices and demand for payment of assessments allegedly given to the defendant, Helen K. Tassop on the 11th day of August, 1972.

On July 8, 1975 Revenue Office Fred Hecht furnished the defendant, Helen K. Tassop, with copies of the notice(s) and demand for payment of

assessments given to the defendant, Helen K. Tassop, on the 11th day of August 1972. A copy of said notice(s) will be available again for inspection on January 21, 1976.

3. All correspondence between the plaintiff and the defendant, Helen K. Tassop, including but not limited to all letters, notices and writings sent by the defendant Helen K. Tassop to the plaintiff and all letters, notices and writings sent by the plaintiff to the defendants Tassop Realty Corp., and Helen K. Tassop.

All of said correspondence currently in the custody or control of the Service will be produced with respect to the civil tax liabilities which are the subject matter of this suit. However, the plaintiff objects to the production of any of the Intelligence Division files regarding the defendant Helen K. Tassop for the reason that said closed investigatory files or the documents contained therein are neither relevant nor material to any of the issues before the Court in this proceeding and the plaintiff objects to the production of any Audit Division files relating to any proposed deficiencies in income taxes with respect to Helen K. Tassop and/or Tassop Realty, Inc. as said files or the documents contained therein are neither relevant nor material to the issues before the Court in this action. Moreover, in view of the broad scope of this request the plaintiff asserts the same and all privileges against disclosure specified in item 9 infra.

- 3 -

4. Financial data showing application of all monies paid by or on behalf of the defendant, Helen K. Tassop.

Copies of certificates of assessments and payments (Forms 4340) and copies of transcripts of account (Forms 4304) with respect to the taxable periods which are the subject matter of this litigation were furnished to the defendants on September 19, 1975. These records will again be available on January 21, 1976.

5. A record of all property and monies formerly owned by Helen K. Tassop that was seized by the plaintiff and financial records showing application of proceeds of said seized property.

By letter dated October 16, 1975 counsel for the plaintiff advised former counsel for the defendants, Arthur J. Teichberg, that real property located in Los Angeles, California titled in the name of Helen K. Tassop was seized by the Internal Revenue Service and sold on July 2, 1975 and July 15, 1975 for \$2,575.00 and \$7,101.00 respectively. Prior to the sale, approximately five notices of levy were served on tenants occupying said premises and nominal amounts were received. Checks received by the purchasers of said properties in an attempt to redeem said property by the defendant, Helen K. Tassop, were, upon information and belief returned for insufficient funds. Attached hereto are copies of the deeds to said property.

6. All records of taxpayer's contact with Revenue Officer Lapidus.

All records of the taxpayer's contact with Revenue Officer Lapidus currently in the custody and control of the plaintiff will be produced on January 21, 1976.

7. Daily time records and/or reports of Revenue Officer Lapidus for the months of May, 1972 and August, 1972.

The daily time records and/or reports of Revenue Officer Lapidus for the month of May, 1972 and August, 1972 which refer to his collection activities in connection with the subject matter of this litigation and the defendants, Helen K. Tassop and Tassop Realty, Inc. will be produced. The plaintiff objects to the production of records and/or reports of Revenue Officer Lapidus with respect to his collection activities regarding other citizens who are not parties to this litigation on the grounds that said records and/or reports are neither relevant nor material to the issues before the Court in this action, are confidential and subject to the Privacy Act, (P.L. 93-579) and the provisions of Sections 6103 and 7213 of the Internal Revenue Code of 1954, and 18 U.S.C., Section 1905. Moreover, the request does not describe the items or category of items sought with reasonable particularity and is unreasonably broad in scope and burdensome.

8. Personnel file for Revenue Officer Lapidus.

The plaintiff objects to the production of the personnel files of Revenue Officer Lapidus for the reasons that the request is unreasonably broad in scope and burdensome and does not describe the items or categories of items sought with reasonable particularity and as stated does not refer to any documents which are relevant or material to any of the issues properly before the Court in this proceeding. Said documents are privileged; subject to the Privacy Act, (P.L. 93-579) and, may not be disclosed without the approval of the Civil Service Commission (5 C.F.R., Section 293.203, 26 C.F.R. par. 1294; Federal Personnel Manual, Chapter 294, Supp. 990-1).

9. All files in possession of the plaintiff pertaining to the tax liability of the defendant, Helen K. Tassop, which is the subject of this litigation.

The request does not describe the items or categories of items with reasonable particularity and is unreasonably broad in scope. However, the collection and audit files in the possession of the plaintiff pertaining to the withholding, FICA and FUTA tax liabilities of the defendant, Helen K. Tassop, will be produced. In view of the broad scope of this request, it is not possible at this point to assert specific claims of privilege as to specific documents or files. Therefore the following privileges will be asserted:

(1) Governmental Privilege. Intra-agency communications and documents containing the mental impressions, opinions and conclusions of Government officials.

(2) Attorney-Client Privilege. Documents containing communications between attorneys from the Office of Regional Counsel and the Internal Revenue Service, as the client.

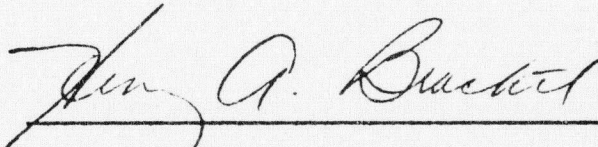
(3) Third Party Tax Return Information. Sections 6103 and 7213 of the Code and 18 U.S.C., Section 1905.

(4) Attorney Work Product. Materials prepared by Government attorneys in preparation for litigation.

To the extent the request seeks closed Intelligence Division investigatory files, said files are neither relevant nor material to the issues before the Court in this action and the plaintiff reserves the right to assert any of the foregoing privileges as well as others with respect to each and every document contained therein.

DAVID G. TRAGER
United States Attorney

By:


Assistant United States Attorney

OF COUNSEL:

J. BRIAN FERREL
Trial Attorney, Tax Division
U.S. Department of Justice
Washington, D. C. 20530
Telephone: 202-739-2997

FACSIMILE OF NOTICE AND DEMAND FOR PAYMENT OF ASSESSMENT FORM

Department of the Treasury
Internal Revenue Service
Director

Date Of
This Notice:

If you find it necessary
to inquire about your
account, please refer
to this number.

DLN--For IRS Use Only

670

570

Form Number:

Tax Period Ended:

Assessment
Date:

Statement Of Tax Due On Federal Tax Return

This is a notice of tax due on your return identified above. The amount shown as Balance Due should be paid within 10 days from the date of this notice. Please make your check or money order payable to Internal Revenue Service and send it with this notice to the address shown above.

Reference

Assessment

Credit

Balance Due

Penalty - Failure to Pay

DUPLICATE - YOUR COPY

Form 3552 (Part 4) (Rev. 9-73)

PLAINTIFF'S NOTICE OF MOTION DATED JANUARY, 1976
FOR PROTECTIVE ORDER
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

79a

----- -x
UNITED STATES OF AMERICA, :
 :
Plaintiff :
 :
v. : CIVIL ACTION NO. 75-C-1481
 :
HELEN K. TASSOP, d/b/a :
ST. ANDREW ACADEMY ON THE :
SOUND, et al., :
 :
Defendants : NOTICE OF MOTION
----- -x

TO: Peter R. Newman, Esquire
170 Old Country Road
Mineola, New York 11501

PLEASE TAKE NOTICE that on February 6, 1976 at 10:00
o'clock in the forenoon or as soon thereafter as counsel
may be heard, counsel for the plaintiff, United States of
America, will move the Court at the United States Courthouse,
Brooklyn, New York pursuant to Rules 26(c) and 30(d) of the
Federal Rules of Civil Procedure for a Protective Order.

DATE: January _____, 1976.

DAVID G. TRAGER
United States Attorney

By: _____

Assistant United States Attorney

MOTION FOR PROTECTIVE ORDER

UNITED STATES DISTRICT COURT (pp. 80a-81a)
EASTERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA,	:	
Plaintiff	:	
v.	:	CIVIL ACTION NO. 75-C-1481
HELEN K. TASSOP, d/b/a	:	
ST. ANDREW ACADEMY ON THE	:	
SOUND, et al.,	:	
Defendants	:	<u>MOTION FOR A PROTECTIVE ORDER</u>

- - - - - x

The plaintiff, United States of America, by its attorney, David G. Trager, United States Attorney for the Eastern District of New York moves this Court pursuant to Rules 26(c) and 30(d) as follows:

1. For an order directing that the depositions of five Internal Revenue Service employees noticed for January 22, 1976 at 10.00 a.m. and adjourned at 3:30 p.m. be continued at the United States Courthouse for the Eastern District of New York located at 225 Codman Plaza East, Brooklyn, New York rather than at the offices of counsel for the defendants in Mineola, New York.

2. For an order requiring counsel for the defendants to schedule said depositions or any additional depositions prior to the trial date of February 20, 1976 at designated times within two working days of seven working hours each.

The grounds for this motion are as follows:

1. Counsel for the defendants noticed the depositions of five Internal Revenue Service employees for 2:00 p.m. on January 22, 1976 which depositions commenced at 10:00 a.m. on said date per agreement of counsel.

Counsel for the defendants adjourned the first deposition 81a
of Revenue Officer Fred Hecht at approximately 11:00 a.m.;
adjourned the second deposition of Raymond P. Keen, Chief
of the Collection Division for the Brooklyn District of the
Internal Revenue Service at approximately 1:15 p.m.; and
commenced the deposition of Revenue Officer Daniel Lapidus
at approximately 2:45 p.m. and adjourned it at 3:30 p.m. The
other two witnesses, whose depositions were noticed Louis
Scotti and Mr. Nespola Group Supervisors in the Internal
Revenue Service were never called.

3. Counsel for the defendants seeks to continue all
five depositions at his offices in Mineola, New York.

4. The records and employees (with one exception) of
the plaintiff are located at the United States Courthouse in
Brooklyn, New York or at the Flushing New York office of the
Internal Revenue Service and plaintiff should not be required
to repeatedly transport its records and produce its officers
at the whim of counsel for the defendants.

5. Repetitious production of plaintiff's records and
officers pursuant to a thoughtless pattern of discovery is
costly to the Government (and, therefore, taxpayers generally)
and many valuable man-hours of time which would otherwise be
spent in protecting the revenue are lost.

6. The defendants are using the deposition procedures
to burden plaintiff with additional expenses, to harass
plaintiff's employees and to delay the trial of this case.

DAVID G. TRAGER
United States Attorney

By:

Assistant United States Attorney

MEMORANDUM OF LAW IN SUPPORT OF MOTION

82a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA,	:	
Plaintiff	:	
v.	:	CIVIL ACTION NO. 75-C-1481
HELEN K. TASSOP, d/b/a	:	
ST. ANDREW ACADEMY ON THE	:	MEMORANDUM OF LAW IN SUPPORT
SOUND, et al.,	:	OF PLAINTIFF'S MOTION FOR A
Defendants	:	<u>PROTECTIVE ORDER</u>

----- x

It is submitted that the adjournment of the depositions in question to the office of counsel for the defendants in Mineola, New York for the convenience of their counsel is oppressive, burdensome, harrassing and delaying within the meaning of Rules 26(c) and 30(d) of the Federal Rules of Civil Procedure. Ginsberg v. Railway Express Agency 6 FRD 371 (SD NY 1945); Jones v. Goldstein, 41 FRD 271 (DMd 1966); Librizzi v. Pinkerton National Det. Agency, 8 F R Serv 2d 30b 31, Case 3 (ED NY 1964); U.S. v. Howard, 360 F. 2d 373, 381 (C.A. 3 1966). In view of the history of this litigation some reasonable restrictions on the time, place and duration of the depositions is desirable. Dyna Power Systems v. Ross, 10 F.R. Serv. 2d 30b 31, Case 2. The depositions should be continued in the United States Courthouse in Brooklyn, New York and concluded promptly.

DAVID G. TRAGER
United States Attorney

By:

Assistant United States Attorney

83a

TO: Peter R. Newman, Esquire
170 Old Country Road
Mineola, New York 11501

PLEASE TAKE NOTICE that on February 6, 1976 at 10:00 o'clock in the forenoon or as soon thereafter as counsel may be heard, counsel for plaintiff, United States of America, will move the Court at the United States Courthouse, Brooklyn, New York, for an Order holding the defendant, Helen K. Tassop in contempt for violation of the Court's September 19, 1975 injunction.

DAVID G. TRAGER
United States Attorney

By: _____
Assistant United States Attorney

-----X	:	
UNITED STATES OF AMERICA,	:	
	:	
Plaintiff	:	
	:	
v.	:	CIVIL ACTION NO. 75-C-1481
	:	
HELEN K. TASSOP, d/b/a	:	
ST. ANDREW ACADEMY OF THE	:	
SOUND, et al.,	:	
	:	MOTION FOR ORDER HOLDING DEFENDANT
	:	HELEN K. TASSOP IN CONTEMPT FOR
Defendants	:	<u>VIOLATION OF THIS COURT'S INJUNCTION</u>
-----X	:	

The United States of America, plaintiff, by its attorney, David G. Trager, United States Attorney for the Eastern District of New York, moves this Court for an Order adjudging the defendant, Helen K. Tassop, in contempt of Court for violation and disregard of the terms of this Court's September 19, 1975 injunction upon the following grounds:

1. On September 19, 1975 this Court entered an Order granting a Preliminary Injunction which required the defendant, Helen K. Tassop, to remain current during the pendency of this litigation in her payment of withholding and Social Security taxes and to surrender to the Clerk of this Court within ten days each and every certificate of stock evidencing her ownership in Tassop Realty. Inc.

2. Although said injunction has been in full force and effect since its entry and defendant, Helen K. Tassop, was served with a copy and has at all times had full knowledge of the terms of said injunction, she has failed and refused to comply with and has disobeyed and disregarded the provisions of said injunction by failing to surrender said stock certificates to the Clerk and by failing to pay over all federal taxes withheld from the wages of the employees of St. Andrew Academy as more particularly set forth in said injunction.

3. The Internal Revenue Service collection officer assigned to verify that the defendant, Helen K. Tassop, remained current pursuant to this Court's September 19, 1975 Order will testify at the hearing on this Motion.

4. In the alternative, the plaintiff moves this Court for an order relieving plaintiff of the restrictions on summary administrative collection of taxes imposed as a condition to granting the September 19, 1975 Preliminary Injunction.

DAVID G. TRAGER
United States Attorney

By: _____

Assistant United States Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MEMORANDUM OF LAW IN SUPPORT
OF MOTION

-----x	:	
UNITED STATES OF AMERICA,	:	
	:	
Plaintiff	:	
	:	
v.	:	CIVIL ACTION NO. 75-C-1481
	:	
HELEN K. TASSOP, d/b/a/	:	
ST. ANDREW ACADEMY OF THE	:	MEMORANDUM IN SUPPORT OF PLAINTIFF'S
SOUND, et al.,	:	MOTION TO HOLD DEFENDANT HELEN K.
	:	<u>TASSOP IN CONTEMPT</u>
Defendants	:	
-----x	:	

The defendant, Helen K. Tassop, has failed to surrender each and every certificate of stock evidencing her ownership in Tassop Realty, Inc., to the Clerk of this Court and has made only one payment of withholding and Social Security taxes since September 19, 1975. There is no doubt that this Court has the remedial power to compel obedience to its September 19, 1975 Order Granting a Preliminary Injunction. 5 Moore's Federal Practice par. 38.33[1]; 7 Moore's supra, par. 65.02[4].

In the alternative, the plaintiff requests that it be relieved of the restrictions imposed by the September 19, 1975 Order on summary administrative collection of defendant's current tax liabilities.

DAVID G. TRAGER
United States Attorney

By: _____

Assistant United States Attorney

JUDGMENT DATED FEBRUARY 9, 1976 AFTER FEBRUARY 6, 1976
HEARING (Filed February 10, 1976)
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

87a

UNITED STATES OF AMERICA,

Plaintiff,

- against -

HELEN K. TASSUP,

Defendant.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ FEB 10 1976

1:45 AM JUDGMENT
P.M.

75 C 1481

M'FILMED

M'FILMED

-----x

This action having come on for hearing
on February 6, 1976, before the Court, the Honorable Orrin G.
Judd, United States District Judge, presiding, and judgment having
been consented to and an order having been made that judgment be
entered in favor of the United States of America and against Helen K.
Tassup in the sum of \$275,000.00, it is

ORDERED and ADJUDGED that the plaintiff re-
cover of the defendant the sum of \$275,000.00

Dated: Brooklyn, New York
February 9, 1986

Lewis Orgel
Clerk

Approved:

U.S.D.J.

UNITED STATES DISTRICT COURT (pp. 88a-105a)

EASTERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA, :

-against- :

75-C-1481

HELEN TASSOP, :

Defendant. :

-----x

United States Courthouse
Brooklyn, New York

February 6, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

PERRY AUERBACH
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: M. R. BRACHTL, ESQ.
Assistant U.S. Attorney

BRIAN FERREL, ESQ.
Department of Justice

PETER R. NEWMAN, ESQ.
170 Old Country Road
Mineola, New York
Attorney for Defendant

1 THE COURT: Yes.

2 MR. NEWMAN: Oh, you have.

3 MR. FERREL: We also have a check that has been
4 submitted by Ms. Tassop, you Honor, in the amount of
5 \$13,000 in an attempt to state --

6 THE COURT: You are Mr. Crantton?

7 MR. FERREL: Mr. Ferrel. In an attempt to be
8 current with the withholding FICA liability. Ms.
9 Tassop states that there are sufficient funds in her
10 bank account to cover this check.

11 THE COURT: All right. Very good. Will you
12 swear in the witness, please.

13 H E L E N T A S S O P, having first been duly sworn by a
14 Clerk of this Court, was examined and testified as
15 follows:

16 THE CLERK: State your name for the record,
17 please.

18 THE WITNESS: Helen Tassop.

19 DIRECT EXAMINATION

20 BY MR. FERRELL:

21 Q Miss Tassop, I show you a check No. 4968 drawn
22 on the account of St. Andrew Academy with the First National
23 City Bank, and I ask you to identify that as a check which
24 you signed today, dated January 31, 1976. (Submitting.)

25 A Yes.

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Q Who is that check payable to?

A Internal Revenue Service.

Q Is that for current withholding and FICA tax liabilities?

A Yes.

Q For what taxable period is that? Would that be for the quarter of 1975?

A Yes.

Q You want that money applied to the fourth quarter of 1975?

A Yes.

Q Have you filed your current withholding taxes?

A Yes.

Q When did you mail it?

A Same day.

Q Do you have sufficient funds in the First National City Bank with which to cover that check?

A Yes.

Q Would you please state for the record the account number at First National City Bank.

A It is hard to read.

Q I would like it on the record, please.

A I believe it is 22190423.

MR. NEWMAN: Fine. No further questions, your Honor.

1
2 THE COURT: Do you want to tell me what the
3 settlement is? Mr. Newman, do you have any questions?

4 MR. NEWMAN: No, your Honor.

5 THE COURT: I have before me a motion for
6 contempt and a motion for protective order. The
7 contempt motion is satisfied.

8 MR. NEWMAN: The contempt order, as we were
9 able to reserve deposition today, that motion is now
10 moved as well.

11 THE COURT: Very good. What is happening with
12 respect to the proposed mortgage?

13 MR. NEWMAN: Well, that I imagine, in view of
14 what has happened, we had not submitted a motion
15 because of the strong possibility of the settlement.
16 I just wanted to make sure that Miss Tassop under-
17 stands on the record what the terms of the settlement
18 will be, and what it means in terms of her obligations,
19 and, Mr. Ferrell, would you want me to have her
20 explain what this is?

21 MR. FERRELL: Yes.

22 THE WITNESS: The terms of the proposed settle-
23 ment will be that the defendant, Helen Tassop, will
24 admit and confess judgment for all.

25 MR. FERRELL: Excuse me, your Honor, may I have

1
2 a conference with Counsel?

3 THE COURT: Yes.

4 (Whereupon a short recess was taken.)

5 MR. FERRELL: Your Honor, can we have a
6 conference in chambers with you about this problem.
7 I think possibly we might need the assistance of the
8 court reporter.

9 MR. NEWMAN: Your Honor, I was supposed to be
10 before Judge Constantino. I was wondering if I could
11 run down there for about ten minutes and return to
12 your chambers?

13 THE COURT: All right. Suppose you do that.

14 (Whereupon a recess was taken.)

15 (Whereupon the following occurred in chambers.)

16 (Time noted: 11:30 a.m.)

17 MR. FERRELL: Now, the Government will concede
18 that the liens as allegedly stated for which notice
19 of demand was given on May 18, 1972, and August 11,
20 1972, were not valid liens.

21 MR. NEWMAN: We are not questioning the -
22 validity of the assessment purposes. We are conceding
23 the liens for the quarters, and Miss Tassop has
24 acknowledged that she has not transferred to any
25 property since the assessment date of 1972.

1
2 THE COURT: Suppose you say that right now.
3 You have not transferred any assets since that
4 time?

5 THE WITNESS: No.

6 THE COURT: This is under oath.

7 MR. NEWMAN: Now, there are certain specific
8 exceptions to the validity of the amounts. The
9 specific items being two payments made on April 19,
10 1973, in the amount of \$153.63 for each one. The
11 second being the crediting of an amount of \$5,000
12 paid, and I don't have the precise date, but paid in
13 connection with an offer of compromise; which sum we
14 don't know how it was applied, being the application
15 of an overpayment in the amount of \$7,281.56 for which
16 overpayment Miss Tassop received a notice on September
17 6, 1968.

18 MR. FERRELL: These are the only four items
19 which could in any way change the balance of the
20 judgment.

21 MR. NEWMAN: I also want to explain to Miss
22 Tassop very clearly that the confession of a judgment
23 by Miss Tassop will result in a new lien being valid
24 against all property that is owned by you. And the
25 Government has the power under this to take immediate

1
2 action to collect the judgment. The judgment will be
3 for tax, interest and the penalties. However, Mr.
4 Ferrell has agreed that he would consider the
5 acceptance of a new offer and compromise, that we will
6 prepare to show that assuming that the school can
7 remain current on its current tax liabilities which
8 will permit the school to mortgage the property or go
9 through fund-raising efforts in order to obtain funds
to stay this judgment and, as part of the offer and
compromise, they would then consider a payment or
12 interest. They are not guaranteeing they will do
13 this, but there is a promise they will look at it in
14 good faith.

15 MR. FERRELL: That does not -- The fact that
16 the Government is willing to consider such an offer
17 does not in any way mean that this is not a binding
18 judgment.

19 MR. NEWMAN: Do you understand this?

20 THE COURT: That means that if the Government
21 decides that the offer is not acceptable the judgment
22 is still there.

23 THE WITNESS: But I do have a chance to
24 mortgage the property and raise money to pay the
25 Government which I originally wanted in 1972?

1
2 MR. FERRELL: You have an opportunity to
3 submit an offer in compromise which I will look at
4 and make a recommendation one way or the other. The
5 offer of course will be subject to the approval of my
6 superiors. As I say, in good faith we will consider
7 it, but I cannot make any kind of commitment as to
8 whether or not we can accept the offer. In order for
9 us to even consider the offer in good faith, the
10 defendant is going to have to remain current with
11 current FICA, and I will ask that the preliminary
12 injunctions on September 19, 1975, will remain in
13 full force and effect.

14 THE WITNESS: Mr. Ferrell, it is very diffi-
15 cult for me to pay the depositors because of the way
16 the tuition came in. I get tuitions in quarterly.
17 That is why I was able to pay that. If I have the
18 depository, no problem, but I can't be strapped with
19 it because I know I have to pay the Government. But
20 maybe I don't have the amount when it is due.

21 THE COURT: Well, the law is, Miss Tassop, that
22 when you pay your salaries you owe the tax, the
23 withheld tax, too, and you are not really current
24 with your staff unless you are able to make your
25 monthly deposits.

1
2 MR. NEWMAN: I believe Miss Tassop in her mind
3 is confusing the amounts of the net payroll, which is
4 the amount paid to the employees, which is the gross
5 payroll less the withholding. I think this is where
6 the confusion has commenced --

7 THE WITNESS: In other words, I get enough
8 money to pay the employees because that pays --

9 THE COURT: But you are not paying for a full
10 salary if you don't pay the share that goes to the
11 Government.

12 THE WITNESS: There was one point that allowed
13 me to pay it the 15th of each month. The depository --
14 is that correct?

15 MR. NEWMAN: Yes.

16 THE COURT: I think you have up to the 15th of
17 the month.

18 MR. FERRELL: Depending upon the amount of the
19 payroll, your Honor. The larger it is, the more
20 frequently you have to turn the money over to the
21 Internal Revenue Department.

22 THE WITNESS: One week I will pay two teachers,
23 the following week I will pay three. They are
24 scattered.

25 MR. FERRELL: The only thing I can offer in

1
2 connection with that which I have offered to some of
3 the other attorneys representing you in this case, I
4 would like you to attempt to get some sort of
5 systematic payroll system established at the school
6 and attempt to do this on a fairly regular basis.
7 That might be of some help to you.

8 THE WITNESS: All right.

9 MR. NEWMAN: But I would again like to
10 re-emphasize to Miss Tassop that the Government's
11 agreement to consider an offer of compromise does not
12 mean that they are absolutely bound not to take admin-
13 istrative procedure. This means that theoretically
14 tomorrow they can take everything the school has.
15 They have that right by law, and they have the right
16 under the terms of this judgment. Mr. Ferrell has
17 agreed to consider an offer of compromise, and I hope
18 their firm would refrain from summary procedures
19 unless the offer would be made.

20 THE COURT: What is a reasonable period?

21 MR. NEWMAN: Within thirty days. Now, your
22 Honor, there is one more problem, and this is the
23 fact that there is currently a mortgage commitment,
24 and what we would like to do, I have estimates now
25 of the closing costs which I did not have until

1
2 yesterday. At present, according to the information I
3 have, there are currently liens which would take
4 approximately \$60,000 to satisfy, prior to the
5 Government, in the approximate amount of \$60,000.
6 Title costs would be approximately \$1200. That
7 includes mortgage insurance, recording, fees for
8 satisfaction of the prior mortgage, prior liens, and
9 new surveys.

10 MR. FERRELL: That is all included in the
11 \$1200.

12 MR. NEWMAN: I am sorry, 12 to \$1500 was the
13 figure I was given.

14 MR. FERRELL: What about attorneys fees?

15 MR. NEWMAN: Plus attorneys fees of \$1000 to
16 be paid out of the proceeds of the mortgage.

17 MR. FERRELL: I am saying I am going to
18 recommend that I can make no final commitment.

19 THE COURT: It is only an offer. How much is
20 that going to leave?

21 MR. NEWMAN: Depending on whether you
22 recommend it or not, we would like to close the
23 mortgage as soon as possible. If we can have your
24 commitment to permit at least the other closing costs
25 for all.

1
2 THE COURT: How much will that leave for the
3 Government?

4 MR. NEWMAN: It will leave approximately
5 between thirty-eight and forty thousand dollars.

6 MR. FERRELL: You offer that?

7 MR. NEWMAN: And the balance will be used
8 towards the payment of your tax liability. It has to
9 be. That cannot be used for operating capital.

10 THE WITNESS: I was --

11 THE COURT: You are drowning out.

12 THE WITNESS: There was no reason to drown out,
13 your Honor. If I was given this opportunity in 1972.
14 I had the money in 1972.

15 THE COURT: Let's not go into that.

16 MR. FERRELL: Let me add one other thing in
17 connection with an offer. We have to insist that we
18 be given a second mortgage for any kind of deferment
19 on the real property.

20 MR. NEWMAN: You already have a record.

21 MR. FERRELL: For the record, can you tell us
22 why the stock certificates --

23 MR. NEWMAN: You may not transfer or encumber
24 or sell a stock in the corporation.

25 MR. FERRELL: Does the corporation have any

1
2 any plans to reissue a stock?

3 MR. NEWMAN: It will be held or I will hold it.

4 THE COURT: You are entitled to it in the
5 injunction.

6 MR. NEWMAN: That has never been surrendered.

7 THE COURT: If there is no stock certificate,
8 she is not in contempt or anybody else.

9 MR. FERRELL: As I said, I think a mortgage on
10 the property would be a more compelling reason for
11 agreeing to some form of deferred payment.

12 THE WITNESS: Doesn't bother me.

13 MR. NEWMAN: The mortgage means that you cannot
14 re-mortgage the property without getting the Govern-
15 ment's permission.

16 THE WITNESS: You mean again after this time?

17 MR. NEWMAN: That is correct.

18 THE WITNESS: Until I clear up?

19 THE COURT: Yes.

20 MR. NEWMAN: And it will also give you an
21 opportunity, if you want, possibly to arrange and
22 order early sale to a person who might be interested
23 in taking the property and then leasing it to the
24 school on some equitable basis.

25 THE WITNESS: I don't want to do that.

1 MR. NEWMAN: The fact that you may not want to
2 do it now may --

3 THE COURT: This doesn't have to be on the
4 record.

5 (Whereupon a discussion was held off the
6 record.)

7 MR. FARRELL: The Government would like to get
8 a judgment on the record today.

9 MR. NEWMAN: Miss Tassop, there were two
10 assessments made on 10/28/74 for the first and second
11 quarter of 1969 with respect to each one. It is the
12 amount of \$9,271.70. There are no payments or credits
13 applicable to each of those two periods. There is,
14 however, a notice from the Internal Revenue Service
15 dated the 10th day of April, 1973, with respect to
16 each one, requesting additional assessments, it
17 appears, of \$153.63, which amount appears to have been
18 paid. Subsequent to that, the Government records
19 reflect that a revenue officer, I believe it was
20 Copperill, prepared returns for these two quarters,
21 for which returns he sought Miss Tassop's signature
22 and which Miss Tassop refused to sign, contending
23 that they had previously been filed. The Government
24 has stated that they do not have any copies of what
25 she filed; however, the assessment that was shown to

1 me does indicate that a return was in fact filed. May
2 I see that? (Indicating.)

3 MR. FERRELL: Why are we bringing this up at
4 this point?

5 MR. NEWMAN: Because that is a dollar adjust-
6 ment to the judgment.

7 THE COURT: Off the record.

8 (Whereupon a discussion was held off the
9 record.)

10 THE COURT: Miss Tassop, what I understand
11 Mr. Ferrell has said, is that he will press the case
12 unless he has a judgment entered today for the amount
13 which I understand you have been permitted to. I
14 suggest the figure of \$275,000, which is a little less
15 than the complainant asked, and will be subject to an
16 adjustment in thirty days by motion by either side.
17 Are you willing to do that?

18 THE WITNESS: Yes.

19 MR. NEWMAN: Miss Tassop will state on the
20 record that she will do nothing to encumber the
21 property until such time as a judgment is actually
22 entered into. She will not sell the property. She
23 will not transfer the property, and maintain a status
24 quo as to all property owned by her.

25 THE COURT: What I would like now is to record

1 again the condition sent, that the Clerk enter
2 judgment today against you, Miss Tassop, for
3 \$275,000, subject to modification as to the amount by
4 either side on an application within thirty days.

5 MR. NEWMAN: Thank you.

6 THE COURT: Do you agree to that, Miss Tassop?

7 THE WITNESS: Do I?

8 MR. NEWMAN: That is what we agreed to.

9 THE WITNESS: I mean, as long as I can come
10 back in thirty days and say, "I am sorry, I think it
11 is less."

12 MR. NEWMAN: Just one question about the
13 mortgaging of the property. Does the Government
14 concede that for the purposes of expediting and not
15 losing this mortgage commitment, we may go ahead on
16 the mortgage and the gross proceeds of this mortgage
17 will be held in escrow.

18 MR. FERRELL: I can't give you an answer to
19 that today. I can give you an answer to that on
20 Monday morning, I hope, after I confer with the IRS
21 and the escrow would have to be a joint escrow
22 account.

23 MR. NEWMAN: It would be a joint escrow account.
24 In fact, I am willing to pay over to the IRS, in
25 payment of good faith and as partial payment with

1 the offer and compromise, the sum will be approx-
2 imately \$35,000. So we are only talking about
3 \$3,000 which will be held in escrow.

4 MR. FERRELL: That is agreeable with me. I
5 will recommend that, but let me give you a final
6 answer on Monday. That is subject to the question of
7 the brokerage fees and your attorney fee, and the
8 costs which amount to approximately \$3,000, \$3500.

9 MR. NEWMAN: In that area, yes.

10 THE COURT: All right. Thank you.

11 * * *

LETTER FROM PETER R. NEWMAN TO CLERK, EASTERN DISTRICT

ON MARCH 24, 1976

Peter R. Newman (Filed March 26, 1976)*Attorney at Law**170 Old Country Road**Mineola, New York 11501*

616 248-2721

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ MAR 26 1976 ★

TIME A.M.
P.M.

March 24, 1976

Clerk, District Court, Eastern District
U.S. Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States vs. Tassop
Civil Action 75-C-1481

Dear Sir:

This letter will confirm my conversation with Mr. Schwartzbaum that the above entitled action has been adjourned until April 9, 1976, at the request of the defendant with the consent of the plaintiff.

Very truly yours,


PETER R. NEWMAN

PRN:cd

cc J. Brian Farrel, Esq.

(19)

PLAINTIFF'S NOTICE OF MOTION DATED MARCH 24, 1976 FOR
 ORDER CONNECTING JUDGMENT (Filed April 2, 1976)
 UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA, :

Plaintiff :

v. :

CIVIL NO. 75-C-1481

HELEN K. TASSOP, d/b/a :
 ST. ANDREWS ACADEMY ON :
 THE SOUND, et al., :

Defendants :

----- x

TO: Peter R. Newman, Esquire
 170 Old Country Road
 Mineola, New York 11501

FILED
 IN CLERK'S OFFICE
 U. S. DISTRICT COURT E.D. N.Y.

★

APR 2 1976

TIME A.M.

P.M.

Please take notice that on April 9, 1976, at 10:00

o'clock in the forenoon or as soon thereafter as counsel
 may be heard, counsel for the plaintiff, United States of
 America, will move the Court at the United States Courthouse,
 Brooklyn, New York pursuant to Rule 60(a) of the Federal
 Rules of Civil Procedure for an order correcting the
 judgment entered in this case on February 6, 1976.

DATE: March 24, 1976

DAVID G. TRAGER
 United States Attorney

By:

Henry A. Brachtl

Henry A. Brachtl
 Assistant United States Attorney

MOTION TO CONNECT JUDGMENT

(pp. 108a-109a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA, :

Plaintiff :

v. :

CIVIL NO. 75-C-1481

HELEN K. TASSOP, d/b/a :
ST. ANDREWS ACADEMY ON :
THE SOUND, et al., :MOTION TO CORRECT JUDGMENT

Defendants :

----- x

The plaintiff, United States of America, by its attorney, David G. Trager, United States Attorney for the Eastern District of New York, moves this Court pursuant to Rule 60(a) of the Federal Rules of Civil Procedure as follows:

1. On February 6, 1976, this Court entered a judgment in the above-captioned action in favor of the plaintiff, United States of America, against the defendant Helen K. Tassop in the amount of \$275,000 for unpaid withholding, FICA and FUTA taxes.

2. Said judgment was based on the consent of the parties subject to correction by either side as to the amount within 30 days from February 6, 1976, which time was extended to March 26, 1976 with the consent of counsel for the plaintiff and counsel for the defendant, Helen K. Tassop, and with the Court's approval.

3. Pursuant to the Affidavit of Debt of George S. Alberts, District Director of Internal Revenue Service for the District of Brooklyn, New York, attached hereto

- 2 -

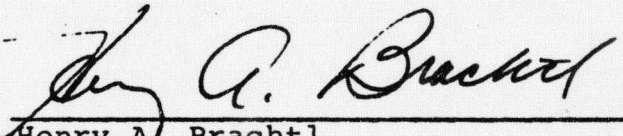
and incorporated herein as Exhibit A, the correct amount of the liability of the defendant Helen K. Tassop d/b/a St. Andrews Academy on the Sound is \$297,093.50 as of February 6, 1976.

4. The difference between the amount of the judgment entered on February 6, 1976 in the amount of \$275,000 and the amount actually due on February 6, 1976, in the amount of \$297,093.50 represents pre-judgment interest to which the United States is entitled as a matter of law under Section 6601 of the Internal Revenue Code of 1954.

WHEREFORE, it is respectfully requested that the judgment in the amount of \$275,000 entered on February 6, 1976 be corrected and increased to \$297,093.50.

DAVID G. TRAGER
United States Attorney

By: -


Henry A. Bracht
Assistant United States Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

v.

HELEN K. TASSOP, d/b/a
St. Andrew Academy
on the Sound, et al.

Defendants.

AFFIDAVIT OF DEBT

No. 75-C-1481

STATE OF NEW YORK)
) SS.
COUNTY OF KINGS)

I, GEORGE S. ALBERTS, being duly sworn, depose and
say:

1. That I am the District Director of Internal Revenue,
for the District of Brooklyn, New York.

2. That I am responsible for the collection of
federal taxes within the said District.

3. That, acting in my official capacity, I have the
official custody of the files and records of the Internal
Revenue Service within the said District relative to the
following taxpayer: Helen K. Tassop, d/b/a St. Andrew
Academy on the Sound.

4. That I have caused an examination to be made of
the aforementioned records and that the records reflect the
following:

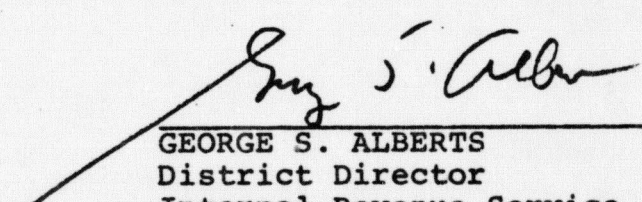
(a) That on the dates shown on the attached
Schedule of Unpaid Tax Liability, which is
incorporated herein and made a part hereof,

assessments were made against Helen K. Tassop, d/b/a St. Andrew Academy on the Sound for unpaid withholding taxes, federal insurance contribution act taxes and federal unemployment tax act taxes, penalties and interest for the periods and in the amounts shown therein.

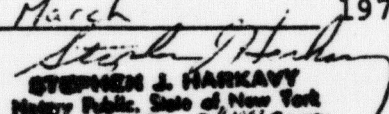
(b) That notices of federal tax liens were filed on the dates and at the places shown on the attached Schedule of Notice of Federal Tax Liens Filed which is incorporated herein and made a part hereof.

(d) That interest and penalties have accrued on the unpaid balance of the tax assessments as set forth in the attached Schedule of Unpaid Tax Liability and that the lien filing fee is also set forth therein.

(e) That as of February 6, 1976 there remains due and owing to the United States of America as the unpaid balance of the assessments against Helen K. Tassop, d/b/a St. Andrew Academy on the Sound the sum of \$224,898.79 plus accrued interest of \$43,680.02 plus accrued penalty of \$28,258.69 and lien filing fees of \$256.00 for a total of \$297,093.50.


 GEORGE S. ALBERTS
 District Director
 Internal Revenue Service
 Brooklyn District

Subscribed and sworn to
 before me this 8th day
 of March 1976.


 STEPHEN J. HARKAVY
 Notary Public, State of New York
 No. 14-1673973 Queens County
 Term Expires March 30, 1977

SCHEDULE OF UNPAID TAX LIABILITY

Taxpayer: Helen K. Tassop, d/b/a St. Andrew Academy on the Sound

Period	Type of Tax	Date of Assessment	Unpaid Assessed Balance	Accrued Failure to Pay Penalty	Accrued Interest	Balance Due as of 2/6/76
1Q69	941	10-28-74	\$ 9,638.66	\$ 457.93	\$ 778.18	\$ 10,874.77
2Q69	941	10-28-74	14,772.33	695.38	1,113.88	16,581.59
4Q69	941	5-16-72	5,667.90	1,536.61	2,892.76	10,097.27
1Q70	941	5-16-72	17,876.42	1,832.72	4,046.62	23,755.76
2Q70	941	5-16-72	16,631.27	1,841.72	3,756.28	22,229.27
4Q70	941	5-16-72	18,657.80	2,552.40	4,295.77	25,505.97
1Q71	941	5-16-72	20,833.07	3,204.66	4,802.86	28,840.59
2Q71	941	5-16-72	18,280.40	3,080.22	4,296.87	25,657.49
4Q71	941	5-16-72	19,612.72	2,743.74	4,669.51	27,025.97
1Q72	941	8-2-72	18,699.77	3,090.69	4,225.46	26,015.92
2Q72	941	8-2-72	12,172.41	2,556.12	2,785.21	17,513.74
4Q72	941	7-9-73	1,317.17	0	228.56	1,545.73
1Q73	941	9-17-73	19,656.84	2,593.57	3,100.79	25,351.20
2Q73	941	10-1-73	262.40	0	32.55	294.95
2Q74	941	8-5-74	4,410.52	364.92	552.62	5,328.06
3Q74	941	12-23-74	240.74	46.34	48.65	335.73
4Q74	941	3-24-75	831.68	0	58.13	889.81
1969	940	11-18-74	5,961.10	382.62	441.03	6,784.75
1970	940	11-18-74	6,942.15	452.19	534.29	7,928.63
1971	940	11-18-74	5,858.85	386.80	469.73	6,715.38
1972	940	11-18-74	6,574.59	440.06	550.27	7,564.92
			\$224,898.79	\$28,258.69	\$43,680.02	\$296,837.50
					LIEN FEES	256.00
					TOTAL	\$297,093.50

SCHEDULE OF UNPAID TAX LIABILITY

SCHEDULE OF NOTICE OF FEDERAL TAX LIENS

113a

EXHIBIT B

SCHEDULE OF NOTICE OF FEDERAL TAX LIENS FILED

Taxpayer: Helen Koula Tassop d/b/a
St. Andrew Academy
 CC:NY-GL 213-73/LDZ

<u>Period</u>	<u>Type of Tax</u>	<u>Register's Office</u> <u>Queens County</u>	<u>Helen Koula Tassop</u> <u>New York Secretary</u> <u>of State</u>
1Q69	WH/FICA	11-12-74	
2Q69	WH/FICA	11-12-74	
4Q69	WH/FICA	5-19-72	6-29-72
1Q70	WH/FICA	5-19-72	6-29-72
2Q70	WH/FICA	5-19-72	6-29-72
4Q70	WH/FICA	5-19-72	6-29-72
1Q71	WH/FICA	5-19-72	6-29-72
2Q71	WH/FICA	5-19-72	6-29-72
4Q71	WH/FICA	5-19-72	6-29-72
1Q72	WH/FICA	8-04-72	8-08-72
2Q72	WH/FICA	8-04-72	8-08-72
4Q72	WH/FICA	7-20-73	
1Q73	WH/FICA	10-09-73	
2Q73	WH/FICA	6-10-74	
2Q74	WH/FICA	12-09-74	
3Q74	WH/FICA	4-17-75	
4Q74	WH/FICA	4-17-75	
1969	FUTA	3-11-75	
1970	FUTA	2-24-75	
1971	FUTA	12-09-74	
1972	FUTA	12-09-74	

MEMORANDUM OF LAW IN SUPPORT OF MOTION
(pp. 114a-115a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA, :

Plaintiff :

v. :

CIVIL NO. 75-C-1481

HELEN K. TASSOP, d/b/a :
ST. ANDREWS ACADEMY ON :
THE SOUND, et al., :

Defendants :

MEMORANDUM OF LAW IN SUPPORT
OF PLAINTIFF'S MOTION FOR A
CORRECTED JUDGMENT PURSUANT
TO RULE 60(a) OF THE FEDERAL
RULES OF CIVIL PROCEDURE

----- x

During the course of a February 6, 1976 conference before the Court, the defendant, Helen K. Tassop d/b/a St. Andrews Academy on the Sound and her counsel agreed to the entry of a judgment for unpaid withholding, FICA and FUTA taxes as specified in the Government's complaint in the amount of \$275,000. Said judgment was subject to correction by either side within 30 days. Said 30 day period was extended by agreement of counsel for the parties and with the approval of Court until March 26, 1976.

As set forth in the Affidavit of Debt of George S. Alberts, District Director of Internal Revenue for the District of Brooklyn, New York attached to the Government's motion as Exhibit A, the defendant Helen K. Tassop was indebted to the United States for unpaid withholding, FICA and FUTA taxes as of February 6, 1976 in the total amount of \$297,093.50.

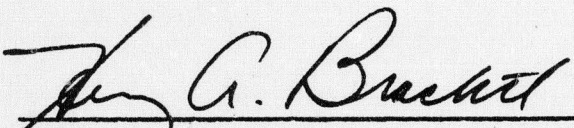
Pursuant to Rule 60(a) of the Federal Rules of Civil Procedure and the agreement of the parties as approved by the Court, the United States moves to correct

- 2 -

the judgment entered on February 6, 1976 by increasing it to \$297,093.50. Under the circumstances, the Court has the power to make the correction, Boods v. Allied Concord Financial Corp., 373 F. 2d 733, 734 (C.A. 5, 1967) and, since the correction sought seeks to include pre-judgment interest to which the United States is entitled by virtue of the provisions of Section 6601 of the Internal Revenue Code of 1954, the Court has the power to grant said motion under Rule 60(a) of the Federal Rules of Civil Procedure. In re Merry Queen Transfer Corp., 266 F. Supp. 605, 606-607 (ED N.Y., 1967); Glick v. White Motor Co., 317 F. Supp. 42, 45 (ED Pa., 1970).

DAVID G. TRAGER
United States Attorney

By:


Henry A. Bracht
Assistant United States Attorney

OF COUNSEL:

J. BRIAN FERREL
Trial Attorney, Tax Division
U.S. Department of Justice
Washington, D. C. 20530
Telephone: 202-739-2997

PLAINTIFF'S NOTICE OF MOTION DATED APRIL, 1976 FOR DECREE
OF FORECLOSURE AND JUDICIAL SALE

116a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA, :

Plaintiff :

v. :

CIVIL ACTION NO. 75-C-1481

NOTICE OF MOTION

HELEN K. TASSOP, d/b/a :

ST. ANDREW'S ACADEMY ON :

THE SOUND, ASTORIA FEDERAL :

SAVINGS & LOAN and M. HOWARD :

LEIBOWITZ, :

Defendants

- - - - - x

TO: Peter R. Newman, Esquire
170 Old Country Road
Mineola, New York 11501

Astoria Federal Savings and
Loan Association
75-25 Metropolitan Avenue
Middle Village, Queens, New York

M. Howard Leibowitz, Esquire
341 West 24th Street
New York City, New York

Please take notice that on April 30, 1976, at 10:00
o'clock in the forenoon or as soon thereafter as counsel may
be heard, counsel for the plaintiff, United States of America,
will move the Court at the United States Courthouse, Brooklyn,
New York pursuant to Rules 69 and 70 of the Federal Rules of
Civil Procedure for an order directing the judicial sale
of real and personal property pursuant to 28 U.S.C., Sections
2001, et seq.

DATE: April _____, 1976

DAVID G. TRAGER
United States Attorney

By:

MOTION FOR DECREE OF FORECLOSURE AND JUDICIAL SALE
(pp. 117a-121a)

117a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA, :

Plaintiff :

CIVIL ACTION NO. 75-C-1481

v. :

HELEN K. TASSOP, d/b/a
ST. ANDREWS ACADEMY ON
THE SOUND, et al., :

MOTION FOR A DECREE OF
FORECLOSURE AND JUDICIAL
SALE

Defendants :

----- x

The plaintiff, United States of America, by its attorney, David G. Trager, United States Attorney for the Eastern District of New York, moves this Court pursuant to Rules 69 and 70 of the Federal Rules of Civil Procedure as follows:

1. On February 9, 1976, a judgment was docketed in the above-captioned action in favor of the plaintiff, United States of America, against the defendant, Helen K. Tassop, in the amount of \$275,000 for unpaid withholding, FICA and FUTA taxes.

2. Said judgment was based on the consent of the parties. A motion by the plaintiff pursuant to Rule 60(a) of the Federal Rules of Civil Procedure to correct and increase said judgment to \$297,093.50 is currently pending before this Court.

3. The defendants, Helen K. Tassop and Tassop Realty, Inc. admit in their answer to paragraphs XIII and XIV of the plaintiff's complaint that the defendant, Helen K. Tassop, as the sole proprietor of the St. Andrew Academy on the Sound

- 2 -

is the owner of the personal property used in the operation of said Academy and is the sole owner of the outstanding stock of the corporate-defendant, Tassop Realty, Inc.

4. The property referred to in paragraph 3 above is subject to the plaintiff's tax liens for withholding and F.I.C.A. taxes for the first and second quarters of 1969, the fourth quarter of 1972, the first and second quarters of 1973, and the second, third and fourth quarters of 1974 and for F.U.T.A. taxes for 1969, 1970, 1971 and 1972, which amount to \$90,195.52 as of February 6, 1976. (See the Affidavit of Debt of George S. Alberts, District Director of Internal Revenue Service for the District of Brooklyn, New York incorporated herein by reference filed with the plaintiff's motion to correct judgment pursuant to Rule 60(a) of the Federal Rules of Civil Procedure.)

5. The defendants, Helen K. Tassop and Tassop Realty, Inc. admit in their answer to paragraphs V and VII of the plaintiff's complaint that the tax assessments referred to in paragraph V of said complaint and specified in Exhibit A thereto were made and that notice and demand for payment were made at all times specified in Exhibit A to said complaint with the exception of notice and demand on May 16, 1972 and August 2, 1972.

6. By virtue of the judgment docketed in this action on February 9, 1976, the property referred to in paragraph 3 above is subject to execution or judicial sale under Rule 69 of the Federal Rules of Civil Procedure.

- 3 -

7. The stock of the corporate-defendant, Tassop Realty, Inc., owned by the defendant, Helen K. Tassop, referred to in paragraph 3 above has not been surrendered to this Court pursuant to this Court's Order of September 19, 1975 because said stock certificates no longer exist. (See p. 52 of the deposition of Helen K. Tassop and p. 14 of the February 6, 1976 transcript of proceedings.)

8. The defendants, Helen K. Tassop and Tassop Realty, Inc. admit in their answer to paragraph XVI of the plaintiff's complaint that Tassop Realty, Inc. owns real property located at 158-07 Riverside Drive and 157-50 9th Avenue, Beechhurst, New York more particularly described in Exhibits C, D and E attached to said complaint.

9. The real property described in Exhibits C and D to said complaint was purchased on August 23, 1961 approximately one month before Tassop Realty, Inc. was formally incorporated in New York State on September 25, 1961 and the deeds to said property were recorded in the name of Tassop Realty, Inc. on October 30, 1961.

10. The real property described in Exhibit E to said complaint was transferred to Tassop Realty, Inc. by the defendant Helen K. Tassop on October 5, 1961 for a stated consideration of \$1.00.

11. The real property described in Exhibits C, D and E to said complaint is the only real property owned by the defendant Tassop Realty, Inc. (See p. 9 of the deposition of Helen K. Tassop.)

- 4 -

12. Helen K. Tassop is the sole officer, sole shareholder, and sole director of Tassop Realty, Inc. which has not had a meeting of officers within the last two years, has no stock certificates, no books and records and no bank account. (See pp.8-9 and 52-53 of the deposition of Helen K. Tassop.)

13. It would be futile for the plaintiff to cause execution to be issued for or to request the judicial sale of nonexistent stock certificates in Tassop Realty, Inc.

14. It would not be in the best interests of the parties hereto for this Court to order the corporate-defendant Tassop Realty, Inc. to re-issue new stock certificates and order their sale as that procedure would be time consuming, and would result in a minimal recovery for the United States.

WHEREFORE, the United States prays as follows:

A. That this Court enter an order decreeing the foreclosure of the federal tax liens described in paragraph 4 above upon the personal property used in the operation of the St. Andrew Academy on the Sound and the stock interest of the defendant, Helen K. Tassop, in the defendant, Tassop Realty, Inc. described in paragraph 3 above.

B. That this Court Order the sale of the personal property used in the operation of the Academy pursuant to Rule 69 of the Federal Rules of Civil Procedure and 28 U.S.C. Sections 2001 and 2004 and distribution of said sales proceeds to the plaintiff.

C. That this Court disregard the corporate existence of the defendant, Tassop Realty, Inc. and Order the judicial sale of the real property described in paragraphs 8, 9 and 10 above and paragraph XVI of plaintiff's complaint pursuant to Rule 69, of the Federal Rules of Civil Procedure and 28 U.S.C., Section 2001, et seq. and the distribution of the sales proceeds to the defendants, Astoria Federal Savings and Loan, M. Howard Leibowitz and to the plaintiff, the United States of America in partial satisfaction of the judgment entered on February 9, 1976, as said parties interests may appear.

D. That, in the alternative, pursuant to Rule 70 of the Federal Rules of Civil Procedure this Court appoint, a receiver, to immediately wind up the affairs of the St. Andrew Academy on the Sound and the defendant, Tassop Realty, Inc., and that said receiver be empowered to promptly liquidate the assets of St. Andrew Academy on the Sound and the defendant Tassop Realty, Inc., including but not limited to the conveyance of the real property described in paragraph XVI of the plaintiff's complaint, the delivery of deeds to the eventual purchaser of said real property, the execution of any other documents, and the performance of all specific acts necessary to the prompt and orderly liquidation of the corporate-defendant, Tassop Realty, Inc.; and that the proceeds of said liquidation be distributed to the plaintiff and any other party entitled thereto.

DAVID G. KUNER
United States Attorney

By:

Assistant United States Attorney

MEMORANDUM OF LAW IN SUPPORT OF MOTION
(pp. 122a-125a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA,	:	CIVIL ACTION NO. 75-C-1481
Plaintiff	:	MEMORANDUM OF LAW IN SUPPORT OF
v.	:	PLAINTIFF'S MOTION FOR A DECREE
HELEN K. TASSOP, d/b/a	:	OF FORECLOSURE AND JUDICIAL SALE
ST. ANDREW ACADEMY ON THE	:	PURSUANT TO RULES 69 AND 70 OF
SOUND, et al.,	:	THE FEDERAL RULES OF CIVIL
	:	<u>PROCEDURE</u>
Defendants	:	

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This is a civil action to reduce federal tax assessments to judgment, to foreclose federal tax liens and to obtain the prompt liquidation of the corporate-defendant, Tassop Realty, Inc.

STATEMENT

This action was commenced on September 9, 1975. A preliminary injunction was entered on September 22, 1975 enjoining the transfer of any or all stock owned by or for the defendant, Helen K. Tassop in Tassop Realty, Inc., requiring that said stock be surrendered to the Clerk of Court and enjoining the transfer of certain real property owned by Tassop Realty, Inc.

On October 17, 1975, an answer was filed on behalf of the defendants, Helen K. Tassop, d/b/a St. Andrew Academy on the Sound and Tassop Realty, Inc. whereby most of the essential allegations contained in the plaintiff's complaint were admitted by said defendants.

- 2 -

Thereafter, following laborious discovery on the part of the plaintiff much of which was accomplished with the assistance of the Court, the defendant, Helen K. Tassop, agreed to the entry of a consent judgment on February 6, 1976 and a judgment in the amount of \$275,000 was entered against her on February 9, 1976.

DISCUSSION

It is abundantly clear that the defendant, Helen K. Tassop, d/b/a St. Andrew Academy on the Sound is indebted to the plaintiff for unpaid withholding, FICA and FUTA taxes. Said taxes are not simply a debt but are part of the wages of the employees, held by the employer in trust for the Government. (26 U.S.C., Section 7501(a).) "In paying the taxes over to the government, the employer merely surrenders that which does not belong to him." Kalb v.

United States, 505 F. 2d 506, 509 (C.A. 2, 1974); Cohen v. United States, 76-1 U.S.T.C. Par. 9116 (ED N.Y., 1975).

There is no question that the property of the defendant, Helen K. Tassop, is subject to the tax liens specified in paragraph 4 of the Government's motion (26 U.S.C. 6321) and to the full tax liability specified in this Court's judgment of February 9, 1976. Since said liens and the liability for taxes are established, this Court is authorized to sell any property of whatever nature of the delinquent taxpayer or in which she has any right, title and interest for the payment of such tax or liability

(26 U.S.C. 7403); United States v. Kocher, 468 F. 2d 503 (C.A. 2, 1972). Although the stock interest of the defendant, Helen K. Tassop, in the defendant Tassop Realty, Inc. is no longer evidenced by stock certificate, it is subject to foreclose and sale in payment of federal taxes United States v. E. Regensburg and Sons, 124 F. Supp. 687 (SD N.Y., 1954) aff'd 221 F. 2d 336 (C.A. 2, 1955) cert. denied 350 U.S. 482 (1955); United States v. Schmidt, 206 F. Supp. 806 (E.D. Mo., 1962); United States v. St. Mary, 334 F. Supp. 799 (E.D. Pa., 1971).

Since the defendant, Helen K. Tassop, is the sole stockholder, sole officer and sole director of the defendant, Tassop Realty, Inc. which, as asserted in the Government's motion, is the mere alter ego of Helen K. Tassop, it would be a needless unproductive act to require that the corporate-defendant re-issue stock certificates which would then be sold pursuant to execution or judicial sale. United States v. Kocher, supra. Under the circumstances of this case, the Court should disregard the corporate fiction, United States v. E. Regensburg and Sons, supra; Paymer v. CIR, 150 F. 2d 334 (C.A. 2, 1945), order the judicial sale of the real property in question and the distribution of the sales proceeds to the parties as their interests may appear.

In the alternative, this Court may enter a judgment directing the defendant Helen K. Tassop, as sole stockholder and as sole officer of Tassop Realty, Inc. to immediately liquidate the assets of Tassop Realty, Inc. subject to appropriate safeguards and in the event she fails to do so this Court may appoint some other person to do so under Rule 70 of the Federal Rules of Civil Procedure.

125a

- 4 -

CONCLUSION

For the foregoing reasons, the Government's motion should be granted.

DAVID G. TRAGER
United States Attorney

By:

Assistant United States Attorney

PLAINTIFF'S NOTICE OF MOTION FOR CONTEMPT ORDER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA, :

Plaintiff :

v. :

HELEN K. TASSOP, d/b/a :
ST. ANDREW ACADEMY ON THE :
SOUND, et al., :

Defendants :

CIVIL ACTION NO. 75-C-1481

NOTICE OF MOTION

----- x

TO: Peter R. Newman, Esquire
170 Old Country Road
Mineola, New York 11501

PLEASE TAKE NOTICE that on April 30, 1976 at 10:00 o'clock in the forenoon or as soon thereafter as counsel may be heard, counsel for plaintiff, United States of America, will move the Court at the United States Courthouse, Brooklyn, New York, for an Order holding the defendant, Helen K. Tassop in contempt for violation of the Court's September 19, 1975 injunction.

DATE: April _____, 1976.

DAVID G. TRAGER
United States Attorney

By:

Assistant United States Attorney

MOTION FOR CONTEMPT ORDER
(pp. 127a-128a)

127a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA, :

Plaintiff :

v. :

HELEN K. TASSOP, d/b/a :

ST. ANDREW ACADEMY ON THE :

SOUND, et al., :

Defendants :

----- x

CIVIL ACTION NO. 75-C-1481

MOTION FOR ORDER HOLDING DEFENDANT
HELEN K. TASSOP IN CONTEMPT FOR
VIOLATION OF THIS COURT'S INJUNCTION

The United States of America, plaintiff, by its attorney, David G. Trager, United States Attorney for the Eastern District of New York, moves this Court for an Order adjudging the defendant, Helen K. Tassop, in contempt of Court for violation and disregard of the terms of this Court's September 19, 1975 injunction upon the following grounds:

1. On September 19, 1975, this Court entered an Order granting a Preliminary Injunction which required the defendant, Helen K. Tassop, to remain current during the pendency of this litigation in her payment of withholding and Social Security taxes.

2. Although said injunction has been in full force and effect since its entry and defendant, Helen K. Tassop, was served with a copy and has at all times had full knowledge of the terms of said injunction, she has failed and refused to comply with and has disobeyed and disregarded the provisions of said injunction by failing to pay over all federal taxes withheld from the wages of the employees of St. Andrew Academy as more particularly set forth in said injunction.

- 2 -

3. The Internal Revenue Service collection officer assigned to verify that the defendant, Helen K. Tassop, remained current pursuant to this Court's September 19, 1975 Order will testify at the hearing on this Motion.

4. In the alternative, the plaintiff moves this Court for an order relieving plaintiff of the restrictions on summary administrative collection of taxes imposed as a condition to granting the September 19, 1975 Preliminary Injunction.

DAVID G. TRAGER
United States Attorney

By:

Assistant United States Attorney

MEMORANDUM OF LAW IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA,

Plaintiff

v.

HELEN K. TASSOP, d/b/a
ST. ANDREW ACADEMY ON THE
SOUND, et al.,

Defendants

----- x

: CIVIL ACTION NO. 75-C-1481

: MEMORANDUM IN SUPPORT OF PLAINTIFF'S
: MOTION TO HOLD DEFENDANT HELEN K.
: TASSOP IN CONTEMPT

The defendant, Helen K. Tassop, has failed to pay withholding and Social Security taxes for the first quarter of 1976 and, therefore, is in violation of this Court's September 1975 order. There is no doubt that this Court has the remedial power to compel obedience to its September 19, 1975 Order Granting a Preliminary Injunction. 5 Moore's Federal Practice, par. 38.33[1]; 7 Moore's supra, par. 65.02[4].

In the alternative, the plaintiff requests that it be relieved of the restrictions imposed by the September 19, 1975 Order on summary administrative collection of defendant's current tax liabilities.

DAVID G. TRAGER
United States Attorney

By:

Assistant United States Attorney

LETTER FROM PETER R. NEWMAN TO THE CLERK, EASTERN
DISTRICT ON APRIL 26, 1976 (Filed April 29, 1976)

Peter R. Newman
Attorney at Law
170 Old Country Road
Mineola, New York 11501
516 248-2721

FILED
IN CLERK'S OFFICE
S. DISTRICT COURT E.D. N.Y.
★
APR 29 1976 ★

April 26, 1976

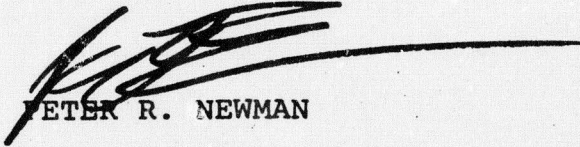
CLERK OF THE COURT
United States District Court
225 Cadman Plaza East
Brooklyn, New York

Re: United States v. Helen K. Tassop
Civil Action No. 75-C-1481

Dear Sir:

This is to confirm my conversation with Mr. Schwartz,
that all motions returnable on Friday, April 30, 1976, have
been adjourned on consent to Friday, May 7, 1976.

Very truly yours,


PETER R. NEWMAN

PRN:kb

cc: J. Brian Ferrel, Esq.
Trial Attorney, Tax Division

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AFFIDAVIT OF JOHN M. GRAHAM JR. DATED APRIL 28, 1976 IN
CONNECTION WITH PLAINTIFF'S MOTION FOR DECREE OF
FORECLOSURE AND JUDICIAL SALE

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK

(pp. 131a-132a)

-----X
UNITED STATES OF AMERICA,

Plaintiff,

-against-

CIVIL ACTION
FILE NO. 75 C 1481

HELEN K. TASSOP, d/b/a ST. ANDREW
ACADEMY ON THE SOUND; TASSOP
REALTY, INC., ASTORIA FEDERAL
SAVINGS AND LOAN ASSOCIATION; and
M. HOWARD LEIBOWITZ,

Defendants.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D. N.Y.

APR 30 1976 ★

TIME A.M.
P.M.

-----X
STATE OF NEW YORK)
COUNTY OF QUEENS) SS.:

JOHN M. GRAHAM, JR., being duly sworn deposes and says:

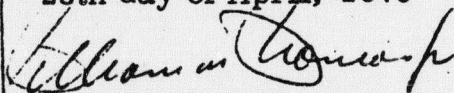
1. That I am an attorney and counsellor at law associated with WILLIAM M. THOMAS, attorney for the defendant ASTORIA FEDERAL SAVINGS AND LOAN ASSOCIATION in the above entitled action and as such am fully familiar with the facts and circumstances thereof.
2. I make this affidavit in connection with the application by the plaintiff UNITED STATES OF AMERICA returnable April 30, 1976 which inter alia seeks an order of this Court for the judicial sale of certain real property described in the complaint.
3. As set forth in the defendant ASTORIA FEDERAL SAVINGS AND LOAN ASSOCIATION's answer filed September 29, 1975, heretofore and on or about December 21, 1964 TASSOP REALTY INC. made, executed and delivered two mortgages on the respective premises described in Paragraph XVI of the complaint to defendant's predecessor in interest, METROPOLITAN SAVINGS AND LOAN ASSOCIATION to secure the payment by said TASSOP

REALTY INC. of bonds or notes in the sum of \$50,000.00 and \$30,000.00 respectively and interest conditioned to be paid in installments as therein stated which mortgages were each recorded in the office of the Register of the County of Queens in Liber 8546 at Pages 364 and 368 on December 28, 1964.

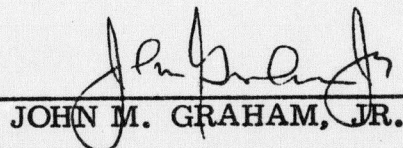
The unpaid balance of each of said mortgages presently held by the defendant ASTORIA FEDERAL SAVINGS AND LOAN ASSOCIATION as successor by merger with METROPOLITAN SAVINGS AND LOAN ASSOCIATION with interest thereon is each a prior lien on the respective premises.

4. Consequently the defendant ASTORIA FEDERAL SAVINGS AND LOAN ASSOCIATION respectfully requests an order of this Court dismissing the complaint in this action as against said defendant or in the alternative, ■ any sale or other transfer of conveyance of the premises which are the subject of either of defendant's mortgages be decreed to be sold according to law subject to the lien of the said prior mortgages to ASTORIA FEDERAL SAVINGS AND LOAN ASSOCIATION and that such liens continue their priority unless and until each of such liens has been paid in full.

Sworn to before me this
28th day of April, 1976



WILLIAM M. THOMAS, JR.
Notary Public, State of New York
No. 30-3968535 - Nassau County
Commission Expires March 30, 1977


JOHN M. GRAHAM, JR.

DEFENDANT'S NOTICE OF MOTION DATED MAY 7, 1976 FOR LEAVE TO
WITHDRAW AS COUNSEL

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :

Plaintiff, :

-against- :

CIVIL ACTION
NO. 75C 1481

HELEN K. TASSOP, d/b/a ST. ANDREW :
ACADEMY ON THE SOUND, TASSOP REALTY, :
INC., ASTORIA FEDERAL SAVINGS AND :
LOAN ASSOCIATION and M. HOWARD :
LEIBOWITZ, :

Defendants. :
-----X

NOTICE OF MOTION.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

MAY 7 1976

S I R S :

PLEASE TAKE NOTICE, that upon the annexed ^{TIME A.M.} ~~PM~~ affidavit of

PETER R. NEWMAN, Esq., duly sworn to the 7th day of May, 1976, the
undersigned will move this Court, at the Courthouse thereof, located
at 225 Cadman Plaza East, Brooklyn, New York, on the ^{7th} ~~5th~~ day of May,
1976, at 10:00 o'clock in the forenoon of that day, or as soon there-
after as counsel can be heard, for leave to withdraw as Counsel.

Dated: May 7, 1976

Yours, etc.,

PETER R. NEWMAN
Attorney for the Defendant, Tassop
350 East Old Country Road
Garden City, New York 11530
516 746 3500

TO: HELEN K. TASSOP
158-07 Riverside Drive
Beechhurst, New York 11357

25

AFFIDAVIT OF PETER R. NEWMAN IN SUPPORT OF MOTION
(Dated May 7, 1976) (pp.134a-137a)

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff

CIVIL ACTION FILE
NO. 75C 1481

v.

HELEN K. TASSOP, d/b/a ST. ANDREW ACADEMY
ON THE SOUND: TASSOP REALTY, INC.: ASTORIA
FEDERAL SAVINGS AND LOAN ASSOCIATION: and
M. HOWARD LEIBOWITZ,
Defendants.

AFFIDAVIT

STATE OF NEW YORK
COUNTY OF NASSAU SS

I, Peter R. Newman, am an attorney admitted to practice law in the Courts of the State of New York. I make this statement in support of my motion for leave to withdraw as counsel for the defendants Helen K. Tassop and Tassop Realty, Inc. in this action.

1. I was engaged to represent the defendants in this action in November, 1975.

2. On February 6, 1976, a consent judgment in this matter was entered into by and between the defendant Helen K. Tassop and the plaintiff.

3. Since that date, serious and irreconcilable differences of opinion as to the future conduct of this litigation and the nature of my future representation have arisen.

4. Additionally, the defendant has consistently refused to cooperate with the defense of this action.

5. Although financial operating information was requested

by your deponent from Helen Tassop, no such financial data has been supplied.

6. This information is vital to the filing of an offer and compromise.

7. On numerous occasions, your deponent has explained to Miss Tassop that even though the tax liens should never have been placed against her property in 1972, and have caused great damage to her and the school, that is not sufficient reason for her not remaining current on her withholding tax liability in 1976.

8. Indeed, that very point was explained to the defendant in Court on February 6, 1976.

9. Your affiant has also transmitted to Miss Tassop the fact that the only conditions upon which the Internal Revenue Service would have considered an offer and compromise of the liabilities was that she remain current on her withholding tax liabilities.

10. Your affiant has been informed by counsel for the plaintiff, that Miss Tassop is still not remaining current in accordance with the provisions of the Internal Revenue Code.

11. Miss Tassop has requested that your affiant move to have the consent judgment entered into on February 6, 1976, set aside upon the grounds that when she entered into said consent judgment, she really did not know the force and effect of said consent judgment.

12. The making of such a motion would force your affiant to advocate a position that your affiant and the Court was satisfied did not exist at the time said consent judgment was entered into.

13. On or about April 28, 1976, a meeting was held with Miss Tassop and Mr. Arthur Teichberg. At said meeting Miss Tassop insisted that the amounts of the original assessments were incorrect. I recommended that an audit be made to determine if this was a fact. It was agreed that Mr. Teichberg would perform said audit. Miss Tassop had an appointment with your affiant for Tuesday, May 4, 1976 at 9:30 A.M.

14. On the day of the appointment, I received a telephone call informing me that Miss Tassop would be unable to keep said appointment and that she would call later. Miss Tassop called later that day but did not schedule a new appointment.

15. During this week I have had numerous telephone conversations with Mr. Teichberg with reference to this matter, but the defendant never telephoned until Thursday.

15. Since February 6, 1976, I have had numerous meetings with Miss Tassop. A synopsis of the conversation is: Miss Tassop would ask me "What happened on February 6th?" I would explain it carefully to her. Then I would attempt to develop a rational plan for liquidation of her judgment. She would refuse to discuss the subject.

16. Your affiant is emotionally sympathetic to Miss Tassop's problems, but it is felt that the relationship has deteriorated to a point where I verily believe another attorney might be more effective in protecting her legal interests.

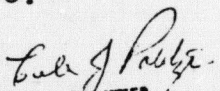
17. Miss Tassop's former attorney, Arthur Teichberg, has been continually expressing interest in this case. Upon information and belief, he has accompanied her on visits to the Internal Revenue Service offices.

WHEREFORE, it is respectfully requested that your affiant be granted leave to withdraw as counsel for Helen K. Tassop and Tassop Realty, Inc.

Dated: May 7, 1976


Peter R. Newman

Sworn to the 7th day of
May, 1976.


CHAS. J. POLITZER
NOTARY PUBLIC, State of New York
No. 20-8400075
Qualified in Nassau County
Commission Expires March 30, 1978

JUDGMENT IN CONTEMPT DATED MAY 7, 1976

138a

(Filed May 7, 1976) (pp. 138a-139a)

S:HAB:ec

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA,

Plaintiff,

- against -

HELEN K. TASSOP, d/b/a ST. ANDREW
ACADEMY ON THE SOUND, et al.,

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. NY
MAY 7 1976
JUDGMENT IN
CONTEMPT

Civil Action
No. 75 C 1481

Defendants.

This cause came on to be heard upon the motion of the plaintiff, the UNITED STATES OF AMERICA for a judgment holding the defendant, Helen K. Tassop in contempt for violation of this Court's September 19, 1975 Preliminary Injunction which required the defendant, Helen K. Tassop, to remain current during the pendency of this litigation in her payment of withholding and Social Security taxes to the plaintiff.

The Court, upon consideration of the motion, all other papers, testimony and oral argument finds that the defendant, Helen K. Tassop, has failed to pay over to the United States any Social Security taxes and federal income taxes required to be withheld by her from the wages of the employees of St. Andrew Academy on the Sound for the first quarter of 1976 as required by this Court's September 19, 1975 Preliminary Injunction, and it is

ORDERED AND ADJUDGED:

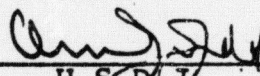
1. That the defendant, Helen K. Tassop, is in contempt of this Court for failing and refusing to obey the Court's September 19, 1975 Preliminary Injunction;

2. That the defendant, Helen K. Tassop, shall be imprisoned from May 14, 1976 at 1 p.m. to May 17, 1976 at 1 p.m., for said contempt.

3. That the defendant, Helen K. Tassop shall report to the United States Marshal for the Eastern District of New York on May 14, 1976 at 1 p.m. and he is directed to imprison her for contempt until May 17, 1976 at ^{P.m.} ~~1 p.m.~~ and,

4. That the defendant may purge herself for her contempt of the Court by paying in full by certified or cashier's check, the withholding and Social Security taxes due for the first quarter of 1976 on or before May 14, 1976 at 1 p.m. and file with the Court on May 14, 1976 a sworn statement setting forth in detail the steps taken to comply with this Court's Preliminary Injunction of September 19, 1975 with respect to the first quarter of 1976.

Dated: Brooklyn, New York
May 7, 1976



U.S.D.J.

AFFIDAVIT OF HELEN K. TASSOP DATED MAY 14, 1976 IN
COMPLIANCE WITH JUDGMENT OF CONTEMPT
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	
-against-	:	<u>AFFIDAVIT</u>
HELEN K. TASSOP, d/b/a ST. ANDREW	:	Civil Action
ACADEMY ON THE SOUND, et al.,	:	
Defendants.	:	75 Civ. 1481

----- X

STATE OF NEW YORK)
 ss.:
COUNTY OF NEW YORK)

HELEN K. TASSOP, being duly sworn, deposes and says:

1. I am one of the defendants in the above-mentioned matter, and I make this Affidavit in compliance with an Order of contempt heretofore issued herein.

2. The 941 return number of Saint Andrew Academy is #11 1822476. The total gross for the first quarter of 1976 is \$56,459.00. The total federal withholdings is \$6,320.63. The Social Security is \$6,210.00. The total payable on the first quarter is \$12,530.63.

3. The said 941 return for the first quarter of 1976 has been filed.

HELEN K. TASSOP

Sworn to before me this
14th day of May, 1976.

NOTICE OF MOTION FOR ORDER AMENDING AND CONNECTING
 JUDGMENTS OF FEBRUARY 9, 1976 AND MAY 7, 1976
 (pp. 141a-142a)
 UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	
-v-	:	CIVIL ACTION NO. 75-C-1481
HELEN K. TASSOP, d/b/a	:	
ST. ANDREWS ACADEMY ON	:	
THE SOUND, ASTORIA FEDERAL	:	<u>NOTICE OF MOTION</u>
SAVINGS & LOAN and M. HOWARD	:	
LEIBOWITZ,	:	
Defendants.	:	

----- x

PLEASE TAKE NOTICE that on the 27th day of May, 1976 at 10 o'clock or as soon thereafter, as counsel may be heard, counsel for the Defendant, HELEN K. TASSOP, will move the court at the United States Courthouse, Brooklyn, New York, pursuant to Rules 59 and 60 of the Rules of Civil Procedure for the United States District Courts for an order:

- a. Amending and correcting the Judgments of this Court of the 9th of February, 1976 and the 7th of May, 1976 by reducing the amount of Judgment in accordance with the statement of account which will be submitted by Defendant;

- b. That the Court reconsider all penalties with a view to reduction or elimination of same.
- c. Alternatively, that the Court appoint an Accountant to revise the accounts submitted by the Plaintiff and Defendant and determine the final amounts that must be paid by Defendant to Plaintiff.

Dated: May 17, 1976.

BY:

GENE CRESCENZI
Attorney for Defendants
415 Lexington Avenue
New York, NY 10017
(212) MU 2-1686

T O :

DAVID G. TRAGER
United States Attorney
225 Cadman Plaza, East
Brooklyn, NY 11201

Astoria Federal Savings
and Loan Association
75-25 Metropolitan Avenue
Middle Village, Queens, NY

M. HOWARD LEIBOWITZ, Esq.
341 West 24th Street
New York, New York

AFFIRMATION OF GENE CRESCENZI IN SUPPORT OF MOTION
 (Dated May 17, 1976) (pp. 143a-144a)
 UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA, :

Plaintiff, :

-v- : CIVIL ACTION NO. 75-C-1481

HELEN K. TASSOP, d/b/a :
 ST. ANDREWS ACADEMY ON :
 THE SOUND, ASTORIA FEDERAL :
 SAVINGS & LOAN and M. HOWARD :
 LEIBOWITZ, :

Defendants. :

A F F I R M A T I O N

- - - - - x

STATE OF NEW YORK)
 ss.:
 COUNTY OF NEW YORK)

GENE CRESCENZI, under penalty of perjury states
 as follows:

That I have been retained by the Defendant, HELEN
 TASSOP on May 14, 1976 herein and I make this Affirmation
 in support of an application to amend and correct the
 Judgment of this Court entered on May 7, 1976 pursuant to
 Rules 59 and 60, RCP.

In the light of the fact that the Defendant,
 HELEN TASSOP consented to the Judgment herein under the
 impression that her attorney would arrange for an accountant
 to establish the true amount of her obligation, and in the
 light of the fact that her former attorney took no effective

steps for this purpose the interest of justice require, that the Defendant be given an opportunity to determine the true amount of the obligation owing to the Plaintiff.

WHEREFORE, it is respectfully requested that the application be granted in all respects,

And that a motion returnable on May 27, 1976 for the sale of the real estate owned by the Defendant be adjourned,

And that all proceedings be stayed for a reasonable time to determine a mathematically correct sum of the judgment herein, together with such other and further relief as may be just herein.

DATED: May 17, 1976.

GENE CRESCENZI

MEMORANDUM OF LAW IN SUPPORT OF MOTION
(Dated May 17, 1976)

(pp. 145a-150a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA, :

Plaintiff, :

-v- :

CIVIL ACTION NO. 75-C-1481

HELEN K. TASSOP, d/b/a :

ST. ANDREWS ACADEMY ON :

THE SOUND, ASTORIA FEDERAL :

SAVINGS & LOAN and M. HOWARD :

LEIBOWITZ, :

Defendants. :

----- x

MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION
FOR AMENDING AND CORRECTING THE JUDGMENTS OF
THIS COURT OF FEBRUARY 9 and MAY 7, 1976.

1. Judgment was entered on February 6 and signed on February 9, 1976, ordering Defendant to pay Plaintiff the sum of \$276,000.
2. As the transcribed minutes of the meeting in the Judge's Chambers on February 6, shows the Judge stated, "What I would like now is to record again the condition set, that the Clerk enter Judgment today against you, Miss Tassop, for \$275,000 subject to modification as to the amount by either side on an application within thirty days (Pages 16-17 of the Minutes).

When the Court asked Defendant: "Do you agree to that, Miss Tassop?"

The Witness: Do I?

Mr Newman: That is what we agreed to.

The Witness: I mean, as long as I can come back in thirty days and say, I am sorry, I think it is less."

3. In Paragraph 11 of the Affidavit submitted by Mr. Peter R. Newman in support of his motion for leave to withdraw as counsel for Defendant, he stated:
"11. Miss Tassop has requested that your affiant move to have the consent judgment entered into on February 6, 1976, set aside upon the grounds that when she entered into said consent judgment, she really did not know the force and effect of said consent judgment."
4. Attorney of Defendant failed, in spite of urging by Defendant, to submit any motion to set aside, correct or amend the said judgment and finally withdrew from the case suddenly under strange circumstances.
5. The second Judgment entered on the 7th of May, 1976, correcting the Judgment of February 9 and raising the amount payable by Defendant to

\$296,000, was made when Defendant was not legally represented and without hearing Defendant.

6. Defendant submits that the original amount of \$276,000 and the second amount of \$296,000, are not correct and that an account should be made to determine the correct figure.
7. Defendant is preparing a statement of account to show that Defendant owes a much lesser amount.
8. It is submitted that an account should be made to show:
 - a. The amounts of taxes due from the Defendant to the Plaintiff,
 - b. Amounts paid by the Defendant on account of these taxes and to which items of taxes these payments should have been credited.
 - c. The amounts of interest which must be charged regarding each installment of taxes due from Defendant.
9. It is submitted that no penalties should be imposed on Defendant for the following reasons:
 - a. The failure to pay the taxes was due to reasonable cause and not to willful neglect. Defendant has run the Academy since 1953

and has always paid the taxes regularly.

b. The Plaintiff conceded that some of the liens were not valid liens (see page 6 of the Court records of February 6, 1976).

c. That the Defendant has been since 1953 running St. Andrews Academy which consists of:

1. Two nursery and Kindergarten schools
2. One elementary school
3. One Junior High School
4. One High School.

The said Academy is under the moral sponsorship of The Greek Orthodox Archdiocese of North and South America. There are over 500 students and 40 teachers in the Academy. Running such an Academy is a great public service. These schools run by the Academy are amongst the best schools in the country, this is testified to by important leaders of the community. The Academy receives no subsidy from any source. It is submitted that such an Academy fulfilling an important public service to the community, is entitled to a special consideration and therefore penalties should not be imposed on Defendant

or attempts be made to over burden the Defendant which may result in the closing of the Academy.

10. The present attorney of Defendant has been engaged in this case only on May 14, 1976 and has not yet obtained copies of all documents and has not yet studied the facts and points of law involved and therefore reserves the right to submit a more detailed memorandum in support of this motion.

C O N C L U S I O N

For the foregoing and additional reasons and arguments and authorities which will be submitted, Defendant respectfully requests that the motion be granted and that an order be entered pursuant to Rules 59 and 60 of the Federal Rules of Civil Procedure:

- a. Amending and correcting the Judgments of this Court of the 9th of February, 1976 and the 7th of May, 1976, reducing the amount of the Judgment in accordance with the statement of account which is submitted by the Defendant.
- b. Reconsider all penalties imposed on Defendant.
- c. Alternatively, that the Court appoint an accountant to revise the accounts submitted by

150a

Plaintiff and Defendant and determine the final amount that must be paid by Defendant to the Plaintiff and that an order should be made accordingly amending and correcting the aforementioned two Judgments of this Court.

DATED: May 17, 1976.

Respectfully submitted,

GENE CRESCENZI
Attorney for Defendants
415 Lexington Avenue
New York, New York 10017
(212) MU 2-1686

151a

ORDER DATED MAY, 1976 CONNECTING JUDGMENT
ENTERED FEBRUARY 9, 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA,	:	
Plaintiff	:	
v.	:	CIVIL ACTION NO. 75-C-1481
	:	<u>ORDER CORRECTING JUDGMENT</u>
HELEN K. TASSOP, d/b/a	:	
ST. ANDREW ACADEMY OF THE	:	
SOUND, et al.,	:	
Defendants	:	

- - - - - x

This cause came on to be heard upon the motion of the plaintiff, the United States of America, that the judgment entered in this cause on February 9, 1976 be corrected so as to include interest thereon to the date of entry of judgment,

IT IS ORDERED, that interest shall be recovered by plaintiff and be added to and be a part of the total sum awarded to plaintiff, and that judgment heretofore entered in this cause on February 9, 1976 be amended and corrected to read as follows:

IT IS ORDERED AND ADJUDGED that the plaintiff, the United States of America recover of the defendant, Helen K. Tassop, d/b/a the St. Andrew Academy of the Sound, the sum of \$297,093.50, with interest thereon at the rate of 6 percent as provided by law.

Dated: Brooklyn, New York
May , 1976

UNITED STATES DISTRICT JUDGE

PLAINTIFF'S NOTICE OF MOTION DATED JULY 15, 1976 FOR DECREE
AND FORECLOSURE AND JUDICIAL SALE (Filed July 27, 1976)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :

Plaintiff :

CIVIL ACTION NO. 75-C-1481

v. :

HELEN K. TASSOP, d/b/a :
ST. ANDREW ACADEMY OF THE :
SOUND, et al., :

Defendants :

NOTICE OF MOTION

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ JUL 27 1976 ★

TIME A.M.
P.M.

-----X
TO: EUGENE CRESCENZI
Attorney for Defendants
Helen K. Tassop and
Tassop Realty
415 Lexington Avenue
New York, New York 10017

ARMIN J. KIKEL
Attorney for Estelle Leibowitz Lunge
65-01 Fresh Pond Road
Ridgewood, New York 11227

JOHN M. GRAHAM, JR.
Attorney for Astoria Federal Savings & Loan
Association
36-17 30th Avenue
Long Island City, New York 11103

PLEASE TAKE NOTICE that on July 30, 1976 at 10:00
o'clock in the forenoon at the United States Courthouse
Brooklyn, New York, the plaintiff, the United States of
America, will move the Court for the entry of a Judgment
of Foreclosure and The Judicial Sale of Real Property.

DATE: Brooklyn, New York
July 15, 1976

DAVID G. TRAGER
United States Attorney

By:

Henry A. Brachtel
HENRY A. BRACHTL

Assistant United States Attorney

MOTION FOR DECREE OF FORECLOSURE AND JUDICIAL SALE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :

Plaintiff :

v. :

HELEN K. TASSOP, d/b/a :
ST. ANDREW ACADEMY OF THE :
SOUND, et al., :

Defendants :

CIVIL ACTION NO. 75-C-1481

MOTION

-----X

On May 27, 1976, this Court granted the motion of the plaintiff, the United States of America, for a Decree of Foreclosure and Judicial Sale.

WHEREFORE, the plaintiff, the United States of America, prays that the Court enter the attached Judgment for the Foreclosure of Federal Tax Liens and the Judicial Sale of Real Property.

DAVID G. TRAGER
United States Attorney

By:


HENRY A. BRACHTEL

Assistant United States Attorney

PROPOSED JUDGMENT FOR THE FORECLOSURE OF FEDERAL TAX
LIENS AND JUDICIAL SALE OF REAL PROPERTY
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK (pp. 154a-160a)

-----X
UNITED STATES OF AMERICA,

Plaintiff

v.

HELEN K. TASSOP, d/b/a ST.
ANDREW ACADEMY ON THE SOUND;
TASSOP REALTY, INC.; ASTORIA
FEDERAL SAVINGS AND LOAN
ASSOCIATION; ESTELLE
LEIBOWITZ LUNGO, Executrix
of Estate of HOWARD
LEIBOWITZ,

Defendants

CIVIL ACTION NO. 75-C-1481

JUDGMENT FOR THE FORECLOSURE
OF FEDERAL TAX LIENS AND THE
JUDICIAL SALE OF REAL PROPERTY

-----X
Upon consideration of the motion of the plaintiff,
United States of America, for a Decree of Foreclosure and
Judicial Sale, the parties having been heard and the court
having considered all other pleadings, records, affidavits
and other documents filed in this cause including the
opposition of the defendants, Helen K. Tassop and Tassop
Realty, Inc., to said motion; and the Court having entered
a Judgment for unpaid federal taxes dated February 9,
1976 against Helen K. Tassop, d/b/a St. Andrew Academy on
the Sound as modified by Order dated May 27, 1976 in the
amount of \$297,093.80; and Estelle Leibowitz Lungo,
Executrix of the Estate of Howard Leibowitz, having been
substituted as a party defendant for Howard Leibowitz,
Deceased, it is hereby

ORDERED that the plaintiff, United States of America, is entitled to satisfy the tax liability of Helen K. Tassop, d/b/a St. Andrew Academy on the Sound by the foreclosure of its tax liens described in paragraph 4 of its motion for a Decree of Foreclosure and Judicial Sale pursuant to 26 U.S.C., Section 7403 against the real property hereinafter described titled in the name of Tassop Realty, Inc. and, also, to the judicial enforcement of its February 9, 1976 Judgment as modified by Order dated May 27, 1976 in the amount of \$297,083.50 pursuant to Rule 69 of the Federal Rules of Civil Procedure and it is further

ORDERED, as follows:

1. That the United States Marshal in and for the Eastern District of New York, or his representative, be and he is hereby authorized pursuant to 28 U.S.C., Sections 2001 and 2002 to offer for sale at public auction real property situated in Queens County, Brooklyn, New York, being known by street number as 158-07 Riverside Drive, Beechhurst, Flushing, Brooklyn, New York, titled in the name of Tassop Realty, Inc. and more particularly identified and described as follows:

ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being at Beechhurst, in the Borough and County of Queens, City and State of New York, known and designated as Plot "A" and part of Plot "B" in block no. 39 as shown on a certain map entitled, "Map of Beechhurst (Whitestone Landing) situated in the Third Ward of the Borough and County of Queens, City and State of New York, property of Shore Acres Realty Company, surveyed September 1906 by Charles U. Powell, C.E. & S.," and filed in Queens County Clerk's Office, now Registrar's Office on December 10, 1906, as map No. 986, New No. 1974, which plot and part of plot taken together as one composite parcel, are more

particularly bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of Riverside Drive, (Formerly Sylvan Place) (30 feet wide) with the easterly side of 158th Street (formerly Harbor Road) (30 feet wide);

RUNNING THENCE along the easterly side of 158th Street, 152.75 feet to the sea wall;

THENCE along said sea wall, SOUTH 89 degrees 16 minutes east, 3.44 feet;

THENCE continuing along said sea wall as the same curves to the right along the arc of a circle having a radius of 100 feet, a distance along said curve of 63.79 feet to a point of Tangent in said sea wall;

THENCE along said sea wall, north 89 degrees 01 minutes 30 seconds east, 36 feet;

THENCE southerly parallel with the easterly side of 158th Street 174.31 feet to the northerly side of Riverside Drive; and

THENCE westerly along the northerly side of Riverside Drive, 149.66 feet to the corner, the point or place of **BEGINNING**.

TOGETHER with all right, title and interest, if any, of Tassop Realty, Inc., in and to any streets and roads abutting the above described premises to the center lines thereof, together with all riparian rights of Tassop Realty, Inc.

TOGETHER with all fixtures and articles of personal property now or hereafter attached or appurtenant to or used in the operation of said premises, including (but not limited to) plumbing, heating, lighting and cooking fixtures, air-conditioning fixtures and units, ranges, refrigerators, radio aerials, bathroom and kitchen cabinets, mantels, door mirrors, venetian blinds, shades, window screens, awnings, storm windows, window boxes, storm doors, screen doors, mail boxes, weather vanes, flag poles, pumps, shrubbery and outdoor statuary, all of which shall be deemed to be and remain a part of the realty.

- 4 -

2. That the United States Marshal in and for the Eastern District of New York, or his representative, be and he is hereby authorized pursuant to 28 U.S.C., Sections 2001 and 2002 to offer for sale at public auction that parcel of real property situated in Queens County, Brooklyn, New York, being known by street number as 157-50 Ninth Avenue, Beechhurst, Flushing Brooklyn, New York, titled in the name of Taseop Realty, Inc. and more particularly identified and described as follows:

ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in the Borough and County of Queens, City and State of New York, known and designated on a certain map entitled, "Map of Beechhurst, (Whitestone Landing), situated in the 3rd Ward, Borough of Queens, City of New York, property of Shore Acres Realty Company, surveyed September 1906 by Charles U. Powell, C.E., Flushing, N.Y.", and filed in the Office of the Clerk of the County of Queens, now Register's Office, on December 10th, 1906, as Map No. 986, new No. 1974, as and by the lots No. 26, 27, 28, 29 and 30 in block 19, which said lots when taken together with reference to said map are bounded and described as follows:

BEGINNING at a point on the southerly side of 9th Avenue (formerly 33rd Street) distant 170 feet westerly from the corner formed by the intersection of the southerly side of 9th Avenue (formerly 33rd Street) with the westerly side of 160th Street (formerly 16th Avenue;

RUNNING THENCE southerly parallel with 160th Street, 100 feet;

THENCE westerly parallel with 9th Avenue, 100 feet;

THENCE northerly parallel with 160th Street, 100 feet to the southerly side of 9th Avenue;

THENCE easterly along the southerly side of 9th Avenue, 100 feet to the point or place of **BEGINNING**.

TOGETHER with all right, title and interest, if any, of Tassop Realty, Inc., in and to any streets and roads abutting the above described premises to the center lines thereof.

TOGETHER with all fixtures and articles of personal property now or hereafter attached or appurtenant to or used in the operation of said premises, including (but not limited to) plumbing, heating, lighting and cooking fixtures, air-conditioning fixtures and units, ranges, refrigerators, radio aerials, bathroom and kitchen cabinets, mantels, door mirrors, venetian blinds, shades, window screens, awnings, storm windows, window boxes, storm doors, screen doors, mail boxes, weather vanes, flag poles, pumps, shrubbery and outdoor statuary, all of which shall be deemed to be and remain a part of the realty.

3. That the said parcels of real property be sold by public auction at a time and place situated in Queens County, either on the premises themselves or at any other place in accordance with the provisions of Title 28 U.S.C., Section 2001, to be announced by the United States Marshal after first being advertised once each week for four (4) consecutive weeks preceding the time fixed for such sale in a daily newspaper of general circulation in Queens County, New York, and by any other notice that the United States Marshal or his representatives in his discretion may deem appropriate.

4. That each of said parcels of real property shall be sold as separate units to the highest bidder for each, with plaintiff having the right to withdraw the property from bidding at any time prior to the acceptance of a bid, if, in plaintiff's opinion, the bids are inadequate.

5. That said properties shall be sold free and clear of all liens and encumbrances.

6. That no bids (except as to the United States shall be accepted unless the same is accompanied by a certified check or a cash deposit of at least ten percent (10%) of the amount of the bid.

7. The balance of the purchase price for each property shall be tendered to the United States Marshal by the successful bidder within thirty (30) days following the date of the sale in the form of a certified check. In the event the purchaser fails to fulfill this requirement, the deposit made by him shall be forfeited and applied to the expenses of the sale and the property shall be reoffered for sale. The said sale is subject to confirmation by the Court, at which time title to each parcel shall be executed by the United States Marshal to the successful bidder by deed.

8. That pending the sale of the above-described parcels of real property as ordered herein, and for the purpose of preserving the said properties and placing them in a proper condition of sale, the United States Marshal is authorized to take possession and custody of the real property, to have free access to the premises and to take all action necessary to preserve the said properties between the date of this Order and date of confirmation of sale by this Court.

9. The balance of the proceeds from the sale of the above-described parcels of real property, after deduction of the expenses of sale, shall be distributed in accordance with the following priorities:

- 7 -

First. All unpaid real estate taxes or other charges that are liens on the said property under local law, adjusted to the date of sale.

Second. The sum required to satisfy the outstanding mortgages of Astoria Federal Savings and Loan Association on each of said parcels of real property.

Third. The sum required to satisfy the outstanding mortgages of the Estate of M. Howard Leibowitz on each of said parcels of real property.

Fourth. The tax liens and Judgment of the United States against Helen K. Tassop doing business as St. Andrew Academy on the Sound.

10. In the event that the proceeds of sale of the real estate described above are insufficient to satisfy the claims of the United States, the United States shall have a deficiency judgment in the amount of the unsatisfied portion of its claim and execution shall issue thereon.

DATED, Brooklyn, New York, the _____ day of

_____, 1976.

UNITED STATES DISTRICT JUDGE

AFFIDAVIT OF JOHN M. GRAHAM, JR. DATED JULY 23, 1976 IN
CONNECTION WITH MOTION (pp. 161a-163a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

CIVIL ACTION
NO. 75-C-1481

Plaintiff,

-against-

AFFIDAVIT

HELEN K. TASSOP, d/b/a ST. ANDREW
ACADEMY OF THE SOUND, et al.,

Defendants.

-----x
STATE OF NEW YORK)
COUNTY OF QUEENS) SS.:

JOHN M. GRAHAM, JR., being duly sworn, deposes and says:

1. That I am an attorney and counselor at law associated with WILLIAM M. THOMAS, attorney for the defendant ASTORIA FEDERAL SAVINGS AND LOAN ASSOCIATION in the above entitled action and as such am fully familiar with the facts and circumstances thereof.

2. I make this affidavit in connection with the application of the plaintiff, UNITED STATES OF AMERICA, returnable July 30, 1976 which inter alia seeks an order of this Court for a judgment of foreclosure and the judicious sale of certain real property described in the complaint.

3. As set forth in the answer of the defendant ASTORIA FEDERAL SAVINGS AND LOAN ASSOCIATION filed September 29, 1975, heretofore and on or about December 21, 1984 TASSOP REALTY INC. made, executed and delivered two mortgages on the respective premises described in Paragraph 26 of the complaint of the defendant's predecessor in interest, Metropolitan Federal Savings and Loan Association, to secure the payment by said TASSOP REALTY INC. of bonds or notes in the sum of \$50,000.00

and \$30,000.00 respectively, and interest, conditioned to be paid in installments as therein stated which mortgages were each recorded in the office of the Register of the County of Queens in Liber 8546 mp 364 and 368 on December 28, 1964.

The unpaid balance of each of said mortgages presently held by the defendant ASTORIA FEDERAL SAVINGS AND LOAN ASSOCIATION as successor by merger with Metropolitan Federal Savings and Loan Association, with interest and with any expenses incurred in preserving the mortgaged property and collecting the mortgage debt, is each a prior lien on the respective premises.

4. Consequently, the defendant ASTORIA FEDERAL SAVINGS AND LOAN ASSOCIATION, vigorously opposes that portion of the Government's request that said properties shall be sold free and clear of all liens and encumbrances. It is quite clear that any Deed which shall be delivered pursuant to the sale by the Government of the real property can discharge such property only from all liens, encumbrances and titles over which the lien of the UNITED STATES with respect to which the levy was made had priority.

5. Therefore, the defendant ASTORIA FEDERAL SAVINGS AND LOAN ASSOCIATION, respectfully requests an Order of this Court dismissing the complaint in this action as against said defendant, or in the alternative, if any sale or other transfer or conveyance of the premises which are the subject of either of defendant's mortgages be decreed to be sold according to law, such order provide that the property shall be sold subject to the lien

of said prior mortgages held by ASTORIA FEDERAL SAVINGS AND LOAN ASSOCIATION and that such liens continue their priority unless and until each of such liens has been paid in full.

6. In this respect the defendant apprises the Court of the fact that the owners of the mortgaged premises have failed to make the mortgage payments that were due on the 1st days of February through June 1976 and that pursuant to the terms of each of said mortgages it is the Association's intent to declare the mortgages due and payable and to institute the necessary legal proceedings to recover the amount due thereon.

Sworn to before me this
23rd day of July, 1976

JOHN L. GILHAM, JR.

AFFIDAVIT OF J. BRIAN FERREL IN RESPONSE TO DEFENDANT'S
MEMORANDUM OF LAW DATED JUNE 22, 1976
UNITED STATES DISTRICT COURT (Filed July 27, 1976)
EASTERN DISTRICT OF NEW YORK (pp. 164a-170a)

164a

-----X

UNITED STATES OF AMERICA, :

Plaintiff : CIVIL ACTION NO. 75-C-1481

v. :

HELEN K. TASSOP, d/b/a
ST. ANDREW ACADEMY OF THE
SOUND, et al.,

FILED
IN CLERK'S OFFICE
DISTRICT COURT E.D. N.Y. A F F I D A V I T

Defendants

JUL 27 1976

★

-----X

CITY OF WASHINGTON)
) SS.
DISTRICT OF COLUMBIA)

I, J. BRIAN FERREL, being first duly sworn state to
the best of my knowledge and belief:

1. That I am a trial attorney in the Tax Division
of the United States Department of Justice and as such
I have been assigned the responsibility for handling the
above-entitled action.

2. That on June 25, 1976 at 2:00 p.m. the Honorable
Orrin G. Judd, United States District Judge denied the
May 17, 1976 motion of the defendant, Helen K. Tassop,
to amend and correct the Judgment of this Court entered
on February 9, 1976 as modified by order of the Court
dated May 27, 1976 in the amount of \$297,093.50 with the
proviso that counsel for the United States file a response
to the Statement of Account: Exhibit No. 1 contained at
page 52 of said defendant's June 22, 1976 memorandum in
support of said motion.

3. That, in accordance with the Court's request, this affidavit is submitted in response to said Statement of Account: Exhibit No. 1 contained at page 52 of the defendant's June 22, 1976 memorandum.

4. That the payments and credits which the defendant (ends should have been applied to her unpaid employment taxes for the fourth quarter of 1972 (4Q 72) were applied to unpaid employment tax liabilities of the defendant, Helen K. Tassop, as follows:

(a) The \$6,493.02 payment and/or credit of May 5, 1967 was applied to the unpaid liabilities for the second quarter of 1966.

(b) The \$7,281.55 payment and/or credit of September 6, 1968 was applied to the unpaid liabilities for the fourth quarter of 1966.

(c) The \$1,346.23 and the \$1,500.00 payments and/or credits of September 28, 1970 and September 29, 1970 were combined and applied to the unpaid liabilities for the fourth quarter of 1967 (Exhibit 1, Computer Printout for the Fourth quarter of 1967, attached hereto and incorporated herein by reference).

(d) The \$2,000 payment of September 15, 1972, which, like the payments and/or credits described in (a) through (c) above, was made before the fourth quarter of 1972 began (10/1/72 to 12/31/72), was applied to the unpaid liabilities for the fourth quarter of

1969. It was combined with a \$206.83 payment which represented the proceeds of an Internal Revenue Service levy on certain rental property owned by the defendant in California. (Exhibit 2, Transcript of Account for the fourth quarter of 1969 attached hereto and incorporated herein by reference).

(e) The Internal Revenue Service received only \$445.00 as a result of its levies upon rental property owned by the defendant in California, not \$1,300 as alleged. The \$445.00 was applied as follows:

(i) \$28.17 to close out the fourth quarter of 1967 (Ex. 1);

(ii) \$206.83; \$140.00; and \$70.00 were applied to the fourth quarter of 1969 (Ex. 2).

(f) The payments in the amounts of \$1,805.00 and \$1,800.00 were applied to the fourth quarter of 1972. (Exhibit 3, Certificate of Assessments and Payments for the fourth quarter of 1972, attached hereto and incorporated herein by reference).

(g) The \$3,163.34 payment of October 31, 1972 was applied to the tax liabilities for the third quarter of 1972 which amount represents the amount shown on the return for that period and which amount accompanied the return (Exhibit

4, Computer Printout for the third quarter 1972, attached hereto and incorporated herein by reference).

5. That the payments and credits which the defendant contends should have been applied to her unpaid employment taxes for the first quarter of 1973 (1Q 73) were applied to the unpaid employment tax liabilities of the defendant, Helen K. Tassop, as follows:

(a) The \$12,829.60 payment of January 31, 1973 was applied to the fourth quarter of 1972. (Ex. 3.)

(b) The \$153.60 payment was applied to the first quarter of 1969. In early 1972, a former teacher at the defendant's school applied for social security retirement benefits based on employment at the defendant's school for the first and second quarters of 1969. The Social Security Administration had no record of any money being paid over to it on behalf of said employee for said periods. The Social Security Administration and the Internal Revenue Service subsequently determined that no employment tax returns had been filed for said periods. The defendant was sent notices of assessment and demand for payment in the amount of \$153.60 respectively for the first and second quarters of 1969 on April 10, 1973

by the Internal Revenue Service which she paid on or about April 19, 1973. A subsequent audit by the Internal Revenue Service determined additional deficiencies for the first and second quarters of 1969. (Exhibits 5 and 6, Certificates of Assessments and Payments for the first and second quarters of 1969, attached hereto and incorporated herein by reference.)

6. That the payments and credits which the defendant contends should have been applied to her unpaid employment taxes for the second quarter of 1973 (2Q 73) were applied as follows:

(a) This \$153.60 payment of April 19, 1973 was explained in 5(b) above (Ex. 6).

(b) The \$4,752.88 payment of May 14, 1973 was applied to the second quarter of 1973 (Exhibit 7, Certificate of Assessments and Payments for the second quarter of 1973, attached hereto and incorporated herein by reference).

(c) The \$105.44 payment of June 3, 1973 was applied in satisfaction of a failure to deposit penalty for the third quarter of 1973 (Ex. 4).

(d) The \$5,510.87 payment of June 15, 1973 and the \$1,742.02 payment of July 30, 1973 were applied to the second quarter of 1973 (Ex. 7).

7. That the payments and credits which the defendant contends should have been applied to her unpaid employment taxes for the second, third and fourth quarters of 1974 were applied as follows:

(a) The \$5,000.00 payment was submitted with an offer in compromise which was subsequently rejected and the \$5,000.00 was applied to the earliest unpaid liabilities which were for the first quarter of 1969 (Ex. 5).

(b) The \$15,809.25 payment and the \$824.31 payment of January 31, 1975 accompanied the return for the fourth quarter of 1974 and were combined and applied to the fourth quarter of 1974 liabilities. (Exhibit 8, Certificate of Assessments and Payments for the fourth quarter of 1974, attached hereto and incorporated herein by reference.)

(c) The \$276.60 payment of May 5, 1975 was applied to the unpaid liabilities for the first quarter of 1969 (Ex. 5).

(d) The \$7,101.00 payment of July 15, 1975 and the \$2,575.00 payment of July 1, 1975 represent the proceeds of sale of the defendant's California property which were applied to the unpaid liabilities for the fourth quarter of 1969. (Ex. 2.)

8. That foregoing explanation was orally presented to current counsel for the defendant on or about July 2, 1976.

J. Brian Ferrel
J. BRIAN FERREL
Trial Attorney, Tax Division
U.S. Department of Justice
Washington, D. C. 20530
Telephone: (202) 739-3647

Subscribed and sworn to before me this 15th day of

July, 1976.

Christine H. J. McHugh
NOTARY PUBLIC

My Commission expires:

Jan. 1, 1981

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT:

11-1822
11-1822
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FICMS

CONTINUED

1713

TRANSCRIPT OF ACCOUNT

DATE 04-05-76

WCFR TFR FA

FILING REQ 100000010

SPOUSE-RRB NO
FISCAL MONTH 00

FREEZE-STATUS CODE 173 -Y
ESTABL. DATE 6501

PRIOR NAME CONTROL
DAH CLOSING CODE.

TRANSCRIPT TYPE
SORT DLN

CONTROL DLN 11151-137-1

LOCATION CODES
CURRENT 19-1-

TDA (IF DIFFERENT):

ADJ CONTROL NO _____

H K TASSON
ST ANDREW ACADEMY
158 07 RIV OF
DEERHURST NY 11567

EIN-SSN 11-1822076
PERIOD ENDING 69-12
TYPE OF TAX AT-FICA
FORM FILED 911
NAME CONTROL 1085
EMPLOYMENT CODE

[illegible]

CONTINUED

EXHIBIT 2 - TRANSCRIPT OF ACCOUNT
FOR THE FOURTH QUARTER 1969
(pp. 172a-173a)

172a

TRANSCRIPT OF ACCOUNT

DATE 04-05-76

WCEHTPRFA

TRANSCRIPT TYPE LITIGA
SORT DLN 11151-137-144

H K TASSOP
ST ANDREW ACADEMY
158 07 RIV DR
BEECHHURST NY 11357

EIN-SSN 11-1822476
PERIOD ENDING 69-12
TYPE OF TAX WT-FICA
FORM FILED 941
NAME CONTROL TASS
EMPLOYMENT CODE

FILING REQ 100000010

SPOUSE RRB NO
FISCAL MONTH 00

FREEZE STATUS CODE
ESTAB DATE 6501

PRIOR NAME CONTROL
DAR CLOSING CODE

TVG -YW

STAN

70

CONTROL DLN 11151-137-144
LOCATION CODES
CURRENT 19-1
TDA (IF DIFFERENT)

ADJ CONTROL NO:

EXPLANATION	TRANSACTION DATE	23C DATE OR MEMO ENTRIES	AMOUNT	CYCLE	TRANSACTION DOCUMENT LOCATOR NUMBER	COND. CODE	REMARKS
			CONTINUED				
TDA REG-22	07-03-72						
MODULE BAL			5,667.90				
ACCP LINT	04-05-76		2,903.25				
ACORD P&N	04-05-76		.00				

173a

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

NAME OF TAXPAYER . K. Tassop t. Andrew Academy		ADDRESS (Number, street, city, and State) 158-07 Riverside Drive, Beechhurst, N.Y. 11357			EIN OR SSN 11-1822476		
DATE (a)	EXPLANATION OF TRANSACTIONS (b)	ASSESSMENT (ABATEMENT) (c)	CREDIT (CREDIT REVERSAL) (d)	BALANCE (e)	DLN OR ACCOUNT NO. (f)	23C DATE (g)	PERIOD ENDING (h)
7-09-73	Return Filed and Tax Liability Assessed	16,434.00			1114106200715		Form 941 7212
0-18-72	Subsequent Payment		✓ 1,805.00		1111730870020		
1-03-72	Subsequent Payment		✓ 1,800.00		1111731570228		
12-08-73	Subsequent Payment		✓ 12,829.60		1111706770016		
17-09-73	Computer Generated Assessment of Delinquency Penalty	641.45			1114106200715		
	Generated FTD Penalty	641.45					
	Computer Generated Interest Assessment	16.87					
01-14-74	Fees and Collection Costs	18.00		1,317.17	1111835400064		

I certify that the foregoing transcript of the account of the taxpayer named above in respect to the taxes specified is a true and complete transcript for the period stated, and all assessments, penalties, interest, abatements, credits, and refunds relating thereto as disclosed by the records of this office as of the date of this certification are shown therein.

SIGNATURE OF DIRECTOR	LOCATION Brookhaven Service Center 1040 Waverly Avenue Holtsville, New York 11742	DATE DEC 30 1975
-----------------------	---	----------------------------

EXHIBIT 3 - CERTIFICATE OF ASSESSMENTS AND PAYMENTS FOR THE FOURTH QUARTER, 1972

EXHIBIT 4 - COMPUTER PRINT OUT FOR THE THIRD QUARTER 1972 175a

11-1022350	04 7203	E150	670	040873	11142-101-72001-3			
11-1022300	01 7306		670	040873				
11-1022300	05 7212	E150	670	040873				
11-1022350	01 7306		670	040873				
11-1022400	02 7211	150	670	040873				
11-1022432	04 7203	E150	670	040873				
11-1022432	04 7303	E150	670	040873				
11-1022432	04 7303	E150	670	040873				
11-1022448	04 7303	E150	670	040873				
11-1022448	04 7303	E150	670	040873				
11-1022476	01 6903	474	670	040873				
73159-01075	01 6906	474	670	040873				
73159-01073	01 7109	150	670	040873				
13,515.27	01 7209	150	670	040873				
01 7306	10 6912	420	670	040873				
73159-01078	10 7012	420	670	040873				
73159-01077	10 7112	420	670	040873				
73159-01076								

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

NAME OF TAXPAYER K. Tassop Andrew Academy		ADDRESS (Number, street, city, and State) 158 07 Riverside Drive, Beechhurst, N.Y. 11357			EIN OR SSN 11-1822476		
DATE (a)	EXPLANATION OF TRANSACTIONS (b)	ASSESSMENT (ABATEMENT) (c)	CREDIT (CREDIT REVERSAL) (d)	BALANCE (e)	DLN OR ACCOUNT NO. (f)	23C DATE (g)	PERIOD ENDING (h)
-10-73	Account Transferred In	.00			1115110012001		Form 941 6903
-24-73	Subsequent Payment		✓ 153.60		1111712170513		
-10-73	Additional Tax Assessment-Adjustment	153.60			1115110012001		
-28-74	Manually Computed Delinquency Penalty	2,317.93			1114726490001		
	Miscellaneous Penalty Assessment	231.75					
	Additional Tax or Deficiency Assessment by Audit Division	9,271.70					
	Generated Interest Assessment on Additional Tax or Deficiency	3,093.88					
-06-75	Subsequent Payment		✓ 276.60		1111714870213		
-02-75	Subsequent Payment		✓ 5,000.00	9,638.66	1112414400000		

I hereby certify that the foregoing transcript of the account of the taxpayer named above in respect to the taxes specified is a true and complete transcript for the period stated, and all amounts, penalties, interest, abatements, credits, and refunds relating thereto as disclosed by the records of this office as of the date of this certificate are shown therein.

SIGNATURE OF DIRECTOR 	LOCATION Brookhaven Service Center 1049 Waverly Avenue Holtsville, New York 11742	DATE DEC 30 1975
---------------------------	---	----------------------------

U.S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

FORM 4340 (9-67)

EXHIBIT 5 - CERTIFICATE OF ASSESSMENTS AND PAYMENTS FOR FIRST QUARTER 1969

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

NAME OF TAXPAYER

H. K. Tassop
St. Andrew Academy

ADDRESS (Number, street, city, and State)

158 07 Riverside Drive, Beechhurst, N.Y. 11357

EIN OR SSN

11-1822476

DATE (a)	EXPLANATION OF TRANSACTIONS (b)	ASSESSMENT (ABATEMENT) (c)	CREDIT (CREDIT REVERSAL) (d)	BALANCE (e)	DEB OR ACCOUNT NO. (f)	23C DATE (g)	PERIOD ENDING (h)
04-10-73	Account Transferred In	.00			1115110012002		Form 941 6906
04-24-73	Subsequent Payment		153.60		1111712170512		
04-10-73	Additional Tax Assessment-Adjustment	153.60			1115110012002		
10-28-74	Manually Computed Delinquency Penalty	2,317.93			1114726490000		
	Miscellaneous Penalty Assessment	231.75					
	Additional Tax or Deficiency Assessment by Audit Division	9,271.70					
	Generated Interest Assessment on	2,950.95		14,772.33			
	Additional Tax or Deficiency						

I certify that the foregoing transcript of the account of the taxpayer named above in respect to the taxes specified is a true and complete transcript for the period stated, and all assessments, penalties, interest, abatements, credits, and refunds relating thereto as disclosed by the records of this office as of the date of this certification are shown therein.

SIGNATURE OF DIRECTOR

LOCATION

Brookhaven Service Center
1040 Waverly Avenue
Holtsville, New York 11742

DATE

DEC 30 1975

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

4440

EXHIBIT 6 - CERTIFICATE OF ASSESSMENT AND PAYMENTS FOR SECOND QUARTER 1969

177a

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

NAME OF TAXPAYER H. K. Tassop St. Andrew Academy	ADDRESS (Number, street, city, and State) 158-07 Riverside Drive, Beechhurst, N.Y. 11357	EIN OR SSN 11-1822476
--	---	--------------------------

DATE (a)	EXPLANATION OF TRANSACTIONS (b)	ASSESSMENT (ABATEMENT) (c)	CREDIT (CREDIT REVERSAL) (d)	BALANCE (e)	DLN OR ACCOUNT NO. (f)	23C DATE - (g)	PERIOD ENDING (h)
10-01-73	Return Filed and Tax Liability Assessed	12,005.77			1114122260440		Form 941 7306
07-31-73	Remittance With Return		✓ 1,742.02				
05-21-73	Subsequent Payment		✓ 4,752.88		1111715571555		
06-28-73	Subsequent Payment		✓ 5,510.87		1111719371875		
04-29-74	FTD Penalty	262.40		262.40	1115449400156		

I certify that the foregoing transcript of the account of the taxpayer named above in respect to the taxes specified is a true and complete transcript for the period stated, and all assessments, penalties, interest, abatements, credits, and refunds relating thereto as disclosed by the records of this office as of the date of this certification are shown therein.

SIGNATURE OF DIRECTOR	LOCATION Brookhaven Service Center 1040 Waverly Avenue Holtsville, New York 11742	DATE DEC 30 1975
-----------------------	--	---------------------

EXHIBIT 7 - CERTIFICATE OF ASSESSMENTS AND PAYMENTS FOR SECOND QUARTER 1973

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

NAME OF TAXPAYER

I. K. Tassop

St. Andrew Academy

ADDRESS (Number, street, city, and State)

158-07 Riverside Drive, Beechhurst, N.Y. 11357

EIN OR SSN

11-1822476

[illegible]

That the foregoing transcript of the account of the taxpayer named above in respect to the taxes specified is a true and complete transcript for the period stated, and all payments, penalties, interest, abatements, credits, and refunds relating thereto as disclosed by the records of this office as of the date of this certification are shown therein.

SIGNATURE OF DIRECTOR LOCATION

ATURE OF DIRECTOR

LOCATION

Brookhaven Service Center

1040 Waverly Avenue

Holtsville, New York 11742

DATE

DEC 30 1975

TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

GPO : 1371 O - 108-153

EXHIBIT 8 - CERTIFICATE OF ASSESSMENTS AND PAYMENTS
FOR FOURTH QUARTER 1974

179a

MOTION BY ST. NICHOLAS GREEK ORTHODOX CHURCH OF FLUSHING,
 N.Y. TO INTERVENE AS DEFENDANT (pp. 180a-181a)
 UNITED STATES DISTRICT COURT
 for the EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :

Plaintiff, :

-against-

HELEN TASSOP, ST. ANDREWS
 ACADEMY, et al.,

Defendants, :

SAINT NICHOLAS GREEK ORTHODOX
 CHURCH OF FLUSHING, N.Y.,

Intervenor. :

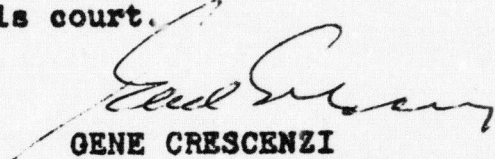
MOTION TO INTERVENE AS A
 DEFENDANT, AND TO APPOINT
 A THREE-JUDGE COURT TO
 ENJOIN THE PLAINTIFF FROM
 ENFORCING AN ACT OF CON-
 GRESS FOR REPUGNANCE TO
 THE UNITED STATES CONSTI-
 TUTION

: Index No. 75 Civ. 1481

-----X

SAINT NICHOLAS GREEK ORTHODOX CHURCH OF FLUSHING,
 N.Y. (hereinafter referred to as SAINT NICHOLAS), by its
 attorney, GENE CRESCENZI, moves for leave to intervene as of
 right under Rule 24 of the FRCP as a defendant in this action
 in order to assert the defenses set forth in its proposed
 Answer, a copy of which is hereto annexed on the ground that
 the intervenor will not be adequately represented and will
 suffer irreparable damage by a judgment in this action, which
 is in violation of law and public policy, for lack of due
 process under the Fourteenth Amendment, and on the further
 ground that it involves an injunction restraining enforcement
 of the operation of an act of Congress for repugnance to the
 United States Constitution, to be determined by a three-judge
 court pursuant to Title 28, U. S. Code, Sections 2282 and

2284, together with such other and further relief as may be just and proper herein to this court.



GENE CRESCENZI
Attorney for Defendants and
Intervenor
415 Lexington Avenue
New York, N.Y. 10017
(212) MU 2-1686

INTERVENOR'S PROPOSED ANSWER

(pp. 182a-184a)

UNITED STATES DISTRICT COURT
for the EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- :

INTERVENOR'S PROPOSED
ANSWER

HELEN TASSOP, ST. ANDREWS :
ACADEMY, et al., :

Index No. 75 Civ. 1481

Defendants, :

SAINT NICHOLAS GREEK ORTHODOX :
CHURCH OF FLUSHING, N.Y., :

Intervenor. :

-----X

1. Intervenor, answering the complaint in its intervenor capacity, by its attorney, GENE CRESCENZI, neither admits nor denies the truth of any of the facts and allegations set forth in the plaintiff's complaint herein.

2. Intervenor intervenes herein pursuant to Title 28, FRCP, Rule 24(a) and seeks intervention as of right, based upon the fact that the applicant's interest by the existing parties will be inadequate and the applicant will be bound by a judgment in the action.

3. Intervenor is a duly organized Greek Orthodox Church operating under the laws of the United States and the State of New York, and as such maintains a chapel which is serviced by its priests at the premises 157-50 Ninth Avenue, Beechhurst, N.Y., and 158-07 Riverside Drive, Beechhurst, N.Y.

4. At the premises, there is also the location of a school owned and operated by the defendants herein, which is under the authority and direction of the Greek Orthodox Archdiocese of North and South America. As such, the said school is a church-related school, absolutely essential to the education of the intervenor's congregants and their children; and, as such, it is a fundamental structure of the religious and cultural community of the intervenor.

5. Upon information and belief, the plaintiff, through its agents, servants, and employees, persists in its determination to foreclose and sell all of the assets of the defendants so that the intervenor's church and its church-related schools and community center shall be destroyed by giving action to the words of an IRS employee, MR. MOBYED, who said:

"Not even if the Greek Government would come up tomorrow to pay \$300,000 would we accept it. We want to close her school."

See Defendant's Memorandum of Law, dated June 22, 1976, Page 60.

WHEREFORE, Intervenor requests the following relief:

That a preliminary injunction pending the trial of the issues be granted to the intervenor and defendants against the plaintiff for the relief sought herein,

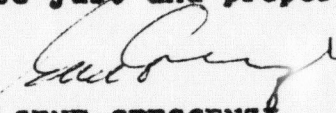
That a three-judge court be convened as provided in Title 28 USC Sections 2282 and 2284, to declare unconstitutional and enjoin the enforcement of the Acts upon which the plaintiff relies in its complaint, Sections 7401 and 7403 of the I.R.C.,

That the plaintiff be restrained from enforcing its judgment against the defendants Tassop and St. Andrew School,

That the intervenor and defendants Tassop and St. Andrew School be allowed to assert their defenses against the complaint herein on the grounds of the unconstitutionality of the plaintiff's actions and demands,

That all proceedings heretofore had herein be vacated and set aside so that a trial may be had upon all issues of law and fact,

That the defendants and intervenor be granted such other and further relief as may be just and proper herein.


GENE CRESCENZI
Attorney for Defendants and
Intervenor
415 Lexington Avenue
New York, N.Y. 10017
(212) MU 2-1686

PLAINTIFF'S SUGGESTION OF DEATH UPON THE RECORD
(Dated August 11, 1976)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :

• Plaintiff : CIVIL ACTION NO. 75-C-1481

v. :

HELEN K. TASSOP, d/b/a :
ST. ANDREW ACADEMY OF THE :
SOUND, et al., :

Defendants ' :

SUGGESTION OF DEATH UPON
THE RECORD

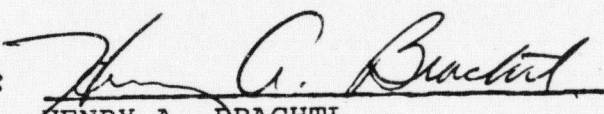
-----X

The United States of America, plaintiff, by its attorney, David G. Trager, United States Attorney for the Eastern District of New York suggests upon the record, pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure the death of the defendant, M. Howard Leibowitz during the pendency of this action.

Dated: Brooklyn, New York
August 11, 1976

DAVID G. TRAGER
United States Attorney

By:


HENRY A. BRACHTEL
Assistant United States Attorney

PLAINTIFF'S NOTICE OF MOTION DATED AUGUST 11, 1976 FOR
 SUBSTITUTION PURSUANT TO RULE 25 FRCP
 UNITED STATES DISTRICT COURT (pp. 186a-187a)
 EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff	:	CIVIL ACTION NO. 75-C-1481
	:	
v.	:	
	:	
HELEN K. TASSOP, d/b/a	:	
ST. ANDREW ACADEMY OF THE	:	<u>NOTICE OF MOTION</u>
SOUND, et al.,	:	
	:	
Defendants	:	

-----X

TO: EUGENE CRESCENZI
 Attorney for Defendants
 Helen K. Tassop and
 Tassop Realty
 415 Lexington Avenue
 New York, New York 10017

ARMIN J. KIKEL
 Attorney for Estelle Leibowitz Lungo
 65-01 Fresh Pond Road
 Ridgewood, New York 11227

JOHN M. GRAHAM, JR.
 Attorney for Astoria Federal Savings & Loan
 Association
 36-17 30th Avenue
 Long Island City, New York 11103

PLEASE TAKE NOTICE that on Sept. 30, 1976 at 10:00
 o'clock in the forenoon or as soon thereafter as counsel
 may be heard, counsel for plaintiff, United States of
 America will move the Court at the United States Courthouse,
 Brooklyn, New York, pursuant to Rule 25(a)(1) for the
 substitution of Estelle Leibowitz Lungo, Executrix of the

187a

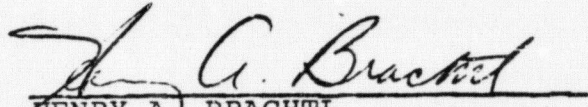
- 2 -

Estate of M. Howard Leibowitz, as a defendant herein in
place of M. Howard Leibowitz, Deceased.

Dated: Brooklyn, New York
August 11, 1976

DAVID G. TRAGER
United States Attorney

By:


HENRY A. BRACHTL
Assistant United States Attorney

MOTION FOR SUBSTITUTION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

(Dated August 11, 1976)
(pp. 188a-189a)

-----X

UNITED STATES OF AMERICA,	:	
Plaintiff	:	CIVIL ACTION NO. 75-C-1481
v.	:	
HELEN K. TASSOP, d/b/a	:	MOTION FOR SUBSTITUTION
ST. ANDREW ACADEMY OF THE	:	PURSUANT TO RULE 25 OF THE
SOUND, et al.,	:	FEDERAL RULES OF CIVIL
Defendants	:	<u>PROCEDURE</u>

-----X

The United States of America, plaintiff, by its attorney, David G. Trager, United States Attorney for the Eastern District of New York moves this Court pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure for an Order substituting Estelle Leibowitz Lungo, Executrix of the Estate of M. Howard Leibowitz, Deceased, as party defendant herein on the following grounds:

1. M. Howard Leibowitz died on May 20, 1976. (A certified copy of the Certificate of Death of said M. Howard Leibowitz is attached hereto and incorporated herein as Exhibit A.)

2. On Aug. 4 , 1976, letters testamentary were issued and granted to Estelle Leibowitz Lungo by the Surrogates Court of New York County, New York, a certification of which is attached hereto and incorporated herein as Exhibit B.

189a

- 2 -

WHEREFORE, the United States of America, plaintiff herein, moves the Court for an Order substituting Estelle Leibowitz Lungo as Executrix of the Estate of M. Howard Leibowitz, Deceased, as a party defendant herein.

DATE: Brooklyn, New York
August 11, 1976

DAVID G. TRAGER
United States Attorney

By:


HENRY A. BRACHTL
Assistant United States Attorney

EXHIBITS ANNEXED TO FOREGOING MOTION FOR SUBSTITUTION:

190a

EXHIBIT A - DEATH CERTIFICATE

CITY OF NEW YORK		BUREAU OF VITAL RECORDS		DEPARTMENT OF HEALTH	
				JUN 15 1976	
				Date	
CERTIFICATE OF DEATH 156-76-109638					
Certificate No.					
1. NAME OF DECEASED First Name Middle Name Last Name MAY 21 PM 12:29					
MEDICAL CERTIFICATE OF DEATH (To be filled in by the Physician)					
PLACE OF DEATH	a. New York City	Name of Hospital or Institution, if not in hospital, street address			
	b. Borough	Beth Israel Medical Center			
DATE AND HOUR OF DEATH	Month	Day	Year	Hour	AM or PM
	7	20	76	10	PM
					SEX
					M
					APPROXIMATE AGE
					74
I HEREBY CERTIFY that I am a duly qualified physician of this institution attending the deceased. (Dr. R. J. J. J.)					
attended the deceased from 4/6 to 5/20 1976 and last seen alive at 7:30 PM on 5/20					
I further certify that traumatic injury or poisoning DID NOT play any part in causing death, and that death did not occur in any unusual manner and was due entirely to NATURAL CAUSES. *Cross out words that do not apply. †See first instruction on reverse of certificate.					
Witness my hand this 20 day of May 1976 Signature R. J. J. J. M.D.					
Name of Physician R. J. J. J. M.D. Address Beth Israel Medical Center					
PERSONAL PARTICULARS (To be filled in by Funeral Director)					
a. State	b. County	c. City or Town	d. Inside city limits (Specify Yes or No)		
New York	New York	New York	Yes		
e. Street and house number			f. Length of residence at place in City of New York immediately prior to death		
341 West 24 St.			Life		
g. SINGLE, MARRIED, WIDOWED, or DIVORCED (Write in word)			h. NAME OF SURVIVING SPOUSE (If wife, give maiden name)		
Single					
i. DATE OF BIRTH OF DECEASED	j. AGE at last birthday	k. IF UNDER 1 year	l. IF LESS than 1 day		
July 13, 1901	74 yrs.	mo.	hrs. or min.		
m. OCCUPATION (Kind of work done during most of working life, even if retired)	n. KIND OF BUSINESS or INDUSTRY	o. SOCIAL SECURITY NO.			
Attorney		099-26-0137			
p. BIRTHPLACE (State or foreign city)	q. OF WHAT COUNTRY WAS DECEASED A CITIZEN AT TIME OF DEATH				
New York	U. S. A.				
r. ANY OTHER NAME(S) BY WHICH DECEASED WAS KNOWN					
Thomas Howard Terbanetz					
s. NAME OF FATHER OF DECEASED	t. MAIDEN NAME OF MOTHER OF DECEASED				
Sam	Esther Feinstein				
u. NAME OF INFORMANT	v. RELATIONSHIP TO DECEASED	w. ADDRESS			
Estelle Jung	Niece	2459 Arthur Court			
x. NAME OF CERTIFYING AGENCY	y. LOCATION (City, Town or Country and State)	z. DATE of Burial or Cremation			
Int. Agent	Princeton, N.J.	May 23, 1976			
a. ADDRESS					
1976 Broadway, New York, N.Y.					
BUREAU OF RECORDS AND STATISTICS		DEPARTMENT OF HEALTH		THE CITY OF NEW YORK	

This is to certify that the foregoing is a true copy of a record in my custody.

Irving J. Mellman
CITY REGISTRAR

The Department of Health does not certify to the truth of the statements made therein, as its duty is to record the facts as stated.

It is not lawful to alter, change, or falsify the value set of the certificate of death, or to use it for any purpose other than that for which it was issued.

191a

EXHIBIT B - CERTIFICATION OF LETTERS TESTAMENTARY

Form CR 12397 50M 12-75

C 21233

The People of the State of New York,

To all to whom these presents shall come or may concern,

SEND GREETING:

Know Ye, That we, having inspected the Records of our Surrogate's Court, in and for the County of New York, do find that on the 4th day of AUGUST in the year one thousand nine hundred and 76 by said Court, Letters Testamentary on the estate of MAURICE HOWARD LEIBOWITZ, ALSO KNOWN AS M. HOWARD LEIBOWITZ AND MAURICE H. LEIBOWITZ late of the County of New York, deceased, were granted unto ESTELLE LUNGO

the Executrix named in the last Will and Testament of said deceased, and that it does not appear by said Records that said Letters have been revoked.

In Testimony Whereof, we have caused the Seal of the Surrogate's Court of the County of New York to be hereunto affixed.

Millard L. Midonick

Witness, Honorable

aid County, in the City of New York, the 10th day of August, 1976

August

a Surrogate of our

[Signature] in the

Clerk of the Surrogate's Court

MEMORANDUM OF LAW IN SUPPORT OF MOTION

(Dated August 11, 1976)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

(pp. 192a-193a)

-----X

UNITED STATES OF AMERICA,	:	
	:	CIVIL ACTION NO. 75-C-1481
Plaintiff	:	
	:	
v.	:	
HELEN K. TASSOP, d/b/a	:	MEMORANDUM IN SUPPORT OF
ST. ANDREW ACADEMY OF THE	:	MOTION FOR SUBSTITUTION
SOUND, et al.,	:	PURSUANT TO RULE 25 OF THE
	:	FEDERAL RULES OF CIVIL
Defendants	:	<u>PROCEDURE</u>

-----X

Rule 25(a)(1) of the Federal Rules of Civil Procedure

provides in pertinent part as follows:

If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 . . .

The instant action involves a claim for unpaid federal taxes which has been reduced to judgment. The United States of America seeks to collect said judgment from the proceeds of sale of certain real property described in its complaint upon which the decedent M. Howard Leibowitz held a second mortgage. Prior to his death, M. Howard Leibowitz filed an answer to the plaintiff's complaint. The real property in question cannot be sold free and clear of all liens unless the representative of the deceased party, M. Howard Leibowitz is substituted. Since the United States is a party to

193a

- 2 -

this action, it may properly move for the substitution of
Estelle Leibowitz Lungo as Executrix of the Estate of M.
Howard Leibowitz, Deceased, as a party defendant herein.

Dated: Brooklyn, New York
August 11, 1976

Respectfully submitted,

DAVID G. TRAGER
United States Attorney

By:


HENRY A. BRACHTL
Assistant United States Attorney

appearance.

STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT

STATE OF NEW YORK

JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS
80 EXCHANGE PLACE AT BROADWAY, NEW YORK

INDEX No.

75-C-1481

STATES OF AMERICA,

against

Plaintiff(s)

TASSOP,

Defendant(s)

FILED
U.S. DISTRICT COURT E.D. N.Y.

DEC 2 1976

Please Take Notice, That the defendant

HELEN K. TASSOP

TIME A.M.
P.M.

appear(s) in the above entitled action, and that the undersigned has been retained as Attorney(s)
defendant(s) and demand(s) that a copy of the Complaint and all papers in this action be served
undersigned at the office and post office address stated below.
November 30, 1976

Yours, etc.

Richard Mitchell, Esq.
United States Department of Justice
Washington, D. C. 20530
Attorney(s) for Plaintiff

ROBERT S. TAFT
Attorney(s) for Defendant

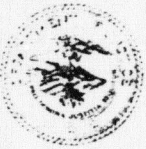
Office and Post Office Address
277 Park Avenue
New York, N.Y. 10017
(212) 826 - 2155

NOTICE OF APPEARANCE OF ROBERT S. TAFT FOR
DEFENDANT (Filed December 2, 1976)

194a

195a

LETTER FROM MYRON C. BAUM TO ROBERT S. TAFT AND GENE
CRESCENZI DATED FEBRUARY 25, 1977



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

February 25, 1977

Address Reply to the
Division Indicated
and Refer to Initials and Number

MCB:JF:RPMitchell:sad
5-52-13040

Robert S. Taft, Esq.
Hatfield, Brady & Taft
277 Park Avenue
New York, New York 10017

Gene Crescenzi, Esq.
415 Lexington Avenue
New York, New York 10017

Re: United States v. Helen K. Tassop, et al.,
Civil No. 75-C-1481 (E. D. N. Y.)

Dear Sirs:

Please be advised that, at the request of the plaintiff, the District Court has scheduled a conference on all matters still pending in this case for Wednesday, March 16, 1977, at 9:30 a.m., at the United States Court House, Brooklyn, New York.

Sincerely yours,

MYRON C. BAUM
Acting Assistant Attorney General
Tax Division

By:

LEONARD FINE
Chief, Civil Trial Section
Northern Region

cc: Clerk of Court
United States District Court
Brooklyn, New York

196a

PLAINTIFF'S OPPOSITION TO MOTION TO INTERVENE
(Filed April 5, 1977) (pp. 196a-198a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D.N.Y.

-----x

UNITED STATES OF AMERICA, : ★ APR 5 1977 ★
 :
 Plaintiff : TIME A.M.
 : P.M.
 v. : CIVIL ACTION NO. 75-C-1481
 :
 HELEN K. TASSOP, d/b/a :
 ST. ANDREW ACADEMY OF : PLAINTIFF'S OPPOSITION TO
 THE SOUND, et al., : MOTION TO INTERVENE BY
 : ST. NICHOLAS GREEK ORTHO-
 Defendants : DOX CHURCH
 -----x

At the recent Court conference in the above-entitled proceeding, the undersigned Government counsel learned that St. Nicholas Greek Orthodox Church had moved to intervene as a party defendant, and to obtain a Three Judge Court to rule upon the constitutionality of Sections 7401 and 7403 of the Internal Revenue Code of 1954.

The basis for the Church's Motion appears to be its concern for the education of the children of the congregation, and for the general preservation of Greek-American culture. While such considerations may certainly be understood and appreciated, they do not address the issues in this case. That the defendant Helen Tassop is the proprietor of a private school that emphasizes Greek culture and the Orthodox faith does not in any manner insulate or immunize her from the withholding provisions of the Internal Revenue Code. Indeed, the suggestion that the federal tax obligation in some manner should be waived in order to protect the religious education of the children in the Church's congregation is itself a request for indirect federal subsidization

of that education, and may run afoul of the First Amendment. See, e.g., Levitt v. Committee for Public Education, 413 U.S. 472 (1973).

The Church itself has no legally protectable interest in this case. It is not the holder of any interest in the real property. To the extent that any of its sacerdotal materials or other personalty are located in the chapels or otherwise on the premises, it will be given an opportunity to remove them prior to any judicial sale. The Church has no standing to intervene in this case, because the school and the real property belong, not to it, but to the defendant Helen Tassop. Cf., Donaldson v. United States, 400 U.S. 517 (1971).

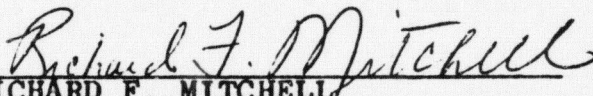
The request for the convocation of a Three Judge Court is frivolous.* / The issue presented by the request, that Sections 7401 and 7403 of the Internal Revenue Code of 1954 are unconstitutional, lacks any merit. These statutes simply provide the procedural mechanism for the Government to enter District Court and to bring a tax collection or lien foreclosure action. Certainly the power of the United States to go into its own Courts and to seek orders in aid of revenue collection

* / The Three Judge Court provision of Title 28, as invoked herein (28 U.S.C., Section 2282), was repealed by Public Law 94-381, effective August 12, 1976, which was apparently several days after the submission of the Church's papers.

is an inherent attribute of sovereignty. See generally the discussion in Wyandotte Transportation Co. v. United States, 389 U.S. 191, 201 (1967), Island Airlines, Inc. v. CAB, 352 F. 2d 735, 744 (C.A. 9, 1965), and Bailey v. United States, 415 F. Supp. 1305, 1312 (D. N. J., 1976). In the absence of a substantial constitutional question, a single federal judge may deny the request for a Three Judge Court, and dispose of the issue presented. Bailey v. Patterson, 369 U.S. 31 (1962).

The request of St. Nicholas Greek Orthodox Church to intervene in this action should be denied.

Respectfully submitted,


RICHARD F. MITCHELL
Trial Attorney
Tax Division
U. S. Department of Justice
Washington, D. C. 20530

DAVID G. TRAGER
United States Attorney

PROSPER PARKERTON
Assistant United States Attorney

TRIAL SUBPOENA OF PETER R. NEWMAN WITH UNITED STATES
MARSHAL'S SERVICE PROCESS RECEIPT AND RETURN

(Filed April 12, 1977) (pp. 199a-200a)
United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HELEN K. TASSOP, d/b/a

ST. ANDREW ACADEMY OF THE SOUND, et al.,
Defendants.

To

Peter R. Newman, Esq.
350 East Old Country Road
Garden City, New York 11530

CIVIL ACTION FILE NO. 75 C 1481

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ APR 12 1977 ★

TIME A.M.
P.M.

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the
Eastern District of New York
at 225 Cadman Plaza East in the city of Brooklyn, New York
on the 22nd day of April, 1977, at 2:00 o'clock P. to testify on
behalf of United States of America
in the above entitled action.

April 4, 1977

DAVID G. TRAGER, USA, EDNY
225 Cadman Plaza East
Brooklyn, New York 11201
Attorney for

By: Prosper K. Parkerton
Asst. U.S. Attorney

Prosper K. Parkerton
(212) 330-7100

RETURN ON SERVICE

By *James L. Gohas*
Clerk.
Deputy Clerk.

Received this subpoena at
and on

at

on

I served it on the within named

by delivering a copy to h and tendering to h the fee for one day's attendance and the
mileage allowed by law.¹

Dated _____, 19 ____

Service Fees

Travel _____ \$
Services _____
Total _____ \$

By _____

Subscribed and sworn to before me, a

this

day of _____, 19 ____

Note:—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.
¹Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the
United States or an officer or agency thereof. 28 USC 1825.

**U.S. MARSHALS SERVICE
PROCESS RECEIPT and RETURN**

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

200a

PLAINTIFF	UNITED STATES OF AMERICA	COURT NUMBER	75 C 1481
DEFENDANT	HELEN K. TASSOP, d/b/a ST. ANDREW ACADEMY OF THE SOUND, et al.	TYPE OF WRIT(S)	Trial Subpoena
SERVE AT	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN PETER R. NEWMAN, ESQ. ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) 350 East Old Country Road, Garden City, New York 11530		

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW: PROSPER K. PARKERTON ASSISTANT U.S. ATTORNEY, EDNY 225 CADMAN PLAZA EAST BROOKLYN, NEW YORK 11201 (212) 330-7100	Number of writs to be served with this form-285	1
	Number parties to be served in this case	1
	Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE:

Signature of Attorney or other Originator requesting service on behalf of: Prosper K. Parkerton, AUSA, EDNY ☒ PLAINTIFF ☐ DEFENDANT TELEPHONE NUMBER (212) 330-7100 DATE 4/4/77

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of writs indicated (Sign only first USM 285 if more than one 285 is submitted)	Total Writs	District of Origin	District to Serve	Signature of Authorized USMS Deputy or Clerk	Date
		53	53	<i>FM</i>	4/4/77

I hereby certify and return that I ☒ have personally served, ☐ have legal evidence of service, ☐ have executed as shown in "Remarks", the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above. (See remarks below)

Name and title of individual served (If not shown above)	☐ A person of suitable age and discretion then residing in the defendant's usual place of abode.
Address (complete only if different than shown above)	Date of Service <u>4/6/77</u> Time <u>am</u> <u>pm</u>

Signature of U.S. Marshal or Deputy	Forwarding Fee	Service Fee	Mileage (Including endeavors)	Total
<i>Donald L. Loman</i>		3.00	6.00	8.00

REMARKS:
I hereby certify and return that at the time of the service of the said trial subpoena, I was told by *him* that said Peter R. Newman, Esq. is not now engaged in military service.

PLAINTIFF'S SUPPLEMENTAL MEMORANDUM RENEWING ITS
REQUEST FOR DECREE OF FORECLOSURE AND JUDICIAL SALE
UNITED STATES DISTRICT COURT (Filed April 21, 1977)
EASTERN DISTRICT OF NEW YORK
-----x (pp. 201a-217a)

201a

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ APR 21 1977 ★

UNITED STATES OF AMERICA,

Plaintiff

v.

HELEN K. TASSOP, d/b/a
ST. ANDREW ACADEMY OF
THE SOUND, et al.,

Defendants

CIVIL ACTION NO. 75-C-1481

SUPPLEMENTAL MEMORANDUM OF
THE UNITED STATES

-----x

By way of this Supplemental Memorandum, the plaintiff the United States renews its request for the entry of an order for the judicial sale of the real property made the subject of this action, and restates its opposition to the defendant's motion for relief from the consent judgment entered last year.

ISSUES

1. Is the defendant entitled to any relief from the consent judgment entered against her on February 6, 1976?
2. Is the United States entitled to a decree for a judicial sale of the defendant's real property?

STATEMENT

The Government brought this action on September 9, 1975, to take a judgment against the defendant Helen Tassop, and to foreclose tax liens, with respect to payroll and unemployment taxes accrued from 1969 through 1974. Pursuant to an evidentiary hearing, District Judge Orrin Judd entered a Preliminary Injunction on September 19, 1975, directing the defendant to make regular deposits of payroll withholding taxes as required by law.

On February 6, 1976, the defendant consented to judgment against herself for the full amount of the tax assessments. This stipulation was made personally, on advice of counsel, on the record and in the presence of Judge Judd. The initial judgment was in the amount of \$275,000 (an arbitrary figure selected by the Court), but the Court gave both parties permission to submit requests for adjustments, and both parties made such requests. The Government's motion to amend was granted on May 27, 1976, and the amount of the judgment was increased to \$297,093.50. The defendant's motion was denied at the hearing on June 25, 1976. This denial was conditioned upon the Government's prompt submission of a statement explaining the credits on the defendant's accounts, and such a verified accounting was served on July 15, 1976.

At the hearing on May 27, 1976, the Court granted the Government's request for a judicial sale, stating at page 11 of the transcript:

I'll grant the motion directing the sale. I will provide that the advertising not begin until after June 25, that will give you a chance to have four weeks advertising and have the sale the last week in July when I am back from vacation, and if you [the defendant] come in on June 25 with something substantial [presumably by way of a proposed settlement] I could postpone the advertising. That's the most I'll do for you.

Unfortunately Judge Judd died before the Government submitted a formal order of sale for his signature.^{1/}

^{1/} Clearly the Court and the parties contemplated that the plaintiff would submit a draft order of sale prior to the hearing on June 25, 1976. However, at the time of the May 27 hearing, the Court and the Government did not know that the defendant mortgagee Howard Leibowitz (who appeared pro se) had died on or about May 20, 1976. Government counsel learned of his death in mid-June, and the effort necessary to identify and substitute the successor executrix delayed the submission of a proper order of sale until July, 1976.

ARGUMENT

203a

I

DEFENDANT'S CHALLENGE TO
THE CONSENT JUDGMENT

By means of her motion and memorandum of May 17, 1976, and of her subsequent memorandum of June 22, 1976, the defendant has sought relief from the consent judgment entered against her on February 6, 1976, as amended on May 27, 1976. The specific grounds for her motion appear to be that in some manner she acted under mistake, inadvertence or excusable neglect in consenting to judgment against her. She has also charged that her former counsel and the Government attorney were guilty of misrepresentation of facts to her. Accordingly, her motion apparently falls under Rule 60(b)(1) and (b)(3) of the Federal Rules of Civil Procedure.

It is clear as a matter of law that the party moving to overturn a judgment under Rule 60 has the burden of proof. United States v. Harrison County, 463 F. 2d 1328 (C.A. 5, 1972); cf. Nederlandsche Handel-Maatschappij N.V. v. Jay Emm, Inc., 301 F. 2d 114 (C.A. 2, 1962). Accordingly, the defendant must prove her contentions under Rule 60 by the weight of the evidence at the upcoming hearing on April 22, 1977. At that time the Government will be prepared to offer its own rebuttal evidence that the defendant fully understood the terms and circumstances of her agreement to the entry of judgment against her.

The agreement of February 6, 1976, was that the defendant Helen Tassop would consent to judgment against herself for the full amount of the tax obligation, in return for which the Government would (1) stipulate the

invalidity of certain tax liens that allegedly arose out of assessments of May 16 and August 2, 1972, and (2) give a good faith consideration to any prompt offer in compromise put forward by the defendant. These terms were explained and reiterated by the defendant in the hearing before the late Judge Judd on February 6, 1976, and a transcript of that proceeding is available. That transcript shows first that her own counsel expressed to the Court the terms of the understanding (pages 5 and 11); that Government counsel expressed his understanding (page 9); and that the District Judge himself restated the matter and obtained the defendant's explicit approval for the entry of judgment (pages 16 and 17). Under such circumstances, the defendant clearly made an informed choice, with advice of counsel and before the Court, and she may not now be relieved of the consequences if she decides that her decision was unfortunate. United States v. Erdoss, 440 F. 2d 1221, 1223 (C.A. 2, 1971); Sampson v. Radio Corporation of America, 434 F. 2d 315 (C.A. 2, 1970); 7 Moore's Federal Practice, § 60.22, pp. 252, 256 (2d ed., 1975).

The only factual point raised by the defendant in her objection to the stipulation of February 6, 1976, is found at page 13 of her June, 1976, memorandum:

Her attorney gave her the impression that the Government would really accept a compromise and permit her to mortgage the property in order to pay the taxes which would be agreed as the result of the compromise and the settlement.

Her conclusion in this regard is not credible, and certainly is contrary to the record. At pages 7 and 8 of the transcript, the defendant's own attorney explained for the sake of the record, and directly to his client, that the Government had promised only a good faith consideration of a settlement offer, and had not guaranteed any compromise. The Government counsel himself reiterated this point at page 9, and the defendant's counsel repeated it at page 11. For the defendant to suggest at this point that her understanding of these discussions was totally different than that expressed by the Court, by her own counsel, and by the Government counsel, defies belief.

The Government has nonetheless kept the terms of its bargain. Government counsel stipulated on the record (Transcript of February 6, 1976, page 6) that the particular disputed liens were invalid -- although this concession does not affect the validity of substantial additional liens at issue herein. Moreover, the Government has itself bent over backwards to give the defendant every opportunity to put forward a reasonable compromise of this litigation. At a full-blown settlement conference on December 20, 1976, in Washington, D. C., attended by five Government attorneys, the defendant promised to provide promptly a substantial body of information and documents in support of her request for a compromise of her liability, but that material was never in fact supplied. Her breach of faith in this regard, together with her repeated delinquencies in current withholding taxes, in blatant disregard of the Preliminary Injunction of September 19, 1975, have

now defeated any possibility of settlement, so that the Government must now enforce this judgment liability.

II

THE NECESSITY OF A
PROMPT JUDICIAL SALE

The defendant Helen Tassop is indebted to the United States in the amount of \$297,093.50, as of February 6, 1976, plus additional interest to date thereon. Moreover, the Complaint does not cover the nine taxable quarters from January 1, 1975, through March 31, 1977, and additional liabilities have arisen for these intervening periods. On September 19, 1975, Judge Judd ordered the defendant to make regular federal tax deposits of her payroll taxes, in accordance with the internal revenue laws, and to date the defendant has utterly failed to make such deposits. Indeed, were this case not so close to the entry of an order of sale of the realty, the Government would seek an order of contempt against the defendant for her conduct.

The Government is advised that the defendant is in default upon the outstanding mortgages on the subject real property, and that her current liabilities thereon are approximately \$100,000. In view of these circumstances, the Government must insist upon a prompt judicial sale of the real property, and suggests that advertising for such sale commence in mid-May, with the sale itself to take place in mid-June, 1977.

III

AUTHORIZATION FOR ASSESSMENT

The Government relies upon the consent judgment entered on February 6, 1976, as subsequently amended, as the basis

upon which this action must proceed. Nevertheless, the defendant has raised persistent issues concerning the Government's underlying action, and the Government will undertake in the balance of this memorandum to respond to her points.

At pages 19 through 26 of the defendant's lengthy memorandum of June 22, 1976, the defendant raises an issue concerning the authorization for the prompt assessment made against her on May 16, 1972. The defendant raises two points, first, that Internal Revenue erred in invoking prompt assessment procedures and, second, that the Revenue Officer lacked appropriate legal authorization to obtain the assessment against her.^{2/}

The criteria for recommending the prompt assessment of federal taxes is set out at Section 5213.52 of the Internal Revenue Manual, and is reproduced at pages 20 and 21 of the defendant's memorandum. The facts and circumstances of the defendant's financial situation in

^{2/} It is important that a prompt assessment be distinguished from a jeopardy assessment. A "prompt assessment" is a term of art of the Internal Revenue Service, and simply refers to a speedup of the ordinary processing of a tax return, so that an assessment may be made within a matter of days rather than within a matter of weeks; however, it does not entail any abridgement, postponement, or suspension of any legal right to which the taxpayer would otherwise be entitled. On the other hand, a "jeopardy assessment" is an extraordinary procedure authorized by statute, at Sections 6861, 6862 and 6863 of the Internal Revenue Code of 1954. Invocation of these procedures requires the explicit approval of the District Director of Internal Revenue, and may in certain circumstances (e.g., income taxes) suspend the taxpayer's right to have a judicial determination of his liability prior to the assessment. The defendant herein has from time to time confused a prompt assessment with a jeopardy assessment, and has suggested to the Court that a jeopardy assessment was made against her; this is not true, only prompt assessments have been made.

May, 1972, clearly fit well within these internal guidelines. In any event, because the Courts have persistently held that they may not look behind the Service's discretionary decision to invoke jeopardy procedures, certainly there is no basis upon which the Courts could review the Service's decision to invoke prompt assessment procedures. See, e.g., Durovic v. Commissioner, 487 F. 2d 36, 40 (C.A. 7, 1973), cert. denied, 417 U.S. 919; Lloyd v. Patterson, 242 F. 2d 742, 744 (C.A. 5, 1957).

The defendant's second point concerns the manner by which the Internal Revenue Service actually made the assessments of May 16, 1972. On May 5, 1972, Helen Tassop filed with Internal Revenue seven delinquent employment tax returns,^{3/} without any remittances thereon. Revenue Officer David Lapidus, who was assigned collection of these accounts, conferred with his Group Supervisor, and between them the determination was made that the circumstances of this delinquency warranted prompt assessment procedures. Accordingly, Mr. Lapidus telephoned the Internal Revenue Service Center at Andover, Massachusetts, to request that such an assessment be made. That assessment was then made at Andover, and Mr. Lapidus was accordingly advised. (A separate factual dispute

^{3/} For the fourth quarter of 1969, the first, second and fourth quarters of 1970, and the first, second, and fourth quarters of 1971.

arose hereafter, as to whether or not Mr. Lapidus delivered a formal notice of the assessment and demand for payment to the defendant; that issue is discussed in the following Argument.)

Section 5213.54 of the Internal Revenue Manual describes the procedure for handling telephone calls to the Service Center to request a prompt assessment. It states:

Service centers will process prompt assessments on a daily basis. When circumstances require more expeditious assessment than can be achieved through written prompt assessment procedure, telephone request for prompt assessment may be made to the service center. Telephonic requests may be made by Collection activity managers, including Office Branch Supervisors and Group Managers who have been delegated authority to determine that collection is in jeopardy. The requests should be limited to cases requiring immediate lien or seizure action to protect the interests of the Government.* * *

The defendant contends that neither Revenue Officer Lapidus nor his Group Supervisor was delegated appropriate authority to make the telephone call to the Andover Service Center. The Government in this case has already acknowledged that it cannot locate any such delegation authority in effect in May, 1972. The defendant thus concludes that the tax assessment, as made by the Service Center, is invalid, and she seeks dismissal of that portion of the Government's case.

The defendant's entire argument is based upon certain language in the Internal Revenue Manual; the Manual is an internal procedural document, and defines itself as follows, at Section 1235.1(1):

The Internal Revenue Manual is designed to serve as the single official compilation of policies, procedures, instructions and guidelines relating to the organization, functions, administration and operation by the Service.* * *

In other words, the Manual is designed to guide and instruct Service personnel in the appropriate procedural mechanisms of the Service. It is not, and was never intended to be, a statement of public rights upon which taxpayers may rely.^{4/} Such publications are found in the Internal Revenue Bulletin, which has been published for years, containing Treasury Decisions, Revenue Rulings, Revenue Procedures, Information Releases, and so forth. Moreover, the Department of the Treasury publishes voluminous regulations commenting upon, explaining or implementing various portions of the Internal Revenue Code, and these are published in the Code of Federal Regulations. Taxpayers must look to these public pronouncements of policy, interpretation, and legal and procedural mechanisms for either their own guidance or for a statement of Government position. The Internal Revenue Manual is the internal control document of the Service, which in no way confers any benefits upon, or imposes any burdens or restrictions upon, the tax-paying public. To the extent any provision of the Manual

^{4/} Until several years ago, the Manual was confidential, and unavailable to the public. It is now public by virtue of the Freedom of Information Act; see Hawkes v. Internal Revenue Service, 507 F. 2d 481 (C.A. 6, 1974).

is breached, no remedy or right arises therefore in the pertinent taxpayer.^{5/}

Similar issues have arisen from time to time in the Federal Courts. In the case of Luhring v. Glotzbach, 304 F. 2d 560 (C.A. 4, 1962), the taxpayer alleged that the District Director failed to follow certain procedural steps set out in the Code of Federal Regulations, and claimed that as a result his tax assessment should be set aside. The Court of Appeals rejected his argument, and stated:

Since the procedural rules now under examination were promulgated without the approval of the Secretary they constitute rules laid down by the Commissioner for the regulation of the affairs of his office rather than formal regulations with the force and effect of law. [Emphasis added.]

In the absence of the force and effect of law, the regulations were not mandatory upon the Service, but simply directory, and no relief could be accorded to the plaintiff taxpayer. Similar cases have arisen with Rosenberg v. Commissioner, 450 F. 2d 529, 531-33 (C.A. 10, 1971); United States v. Lockyer, 448 F. 2d 417 (C.A. 10, 1971); Smith v. United States, 478 F. 2d 398, 400 (C.A. 5, 1973); and Guekink v. United States, 354 F. 2d 629, 632 (C.A. 7, 1965), and in each instance the Courts have held that a particular rule or procedure established within the Service was directory and not mandatory, and

^{5/} Unless, of course, he had such a remedy or right through a separate legal source. For instance, an unprovoked assault upon a taxpayer by an Internal Revenue employee presumably violates not only the Manual, but also the criminal and civil law of the local jurisdiction, and accordingly may give rise to various remedies for the taxpayer.

hence any violation thereof by the Service conferred no benefits upon the allegedly injured taxpayer.

It is thus obvious that the Internal Revenue Manual does not carry the force and effect of law. Assuming that the District Director in 1972 had not issued the delegation order contemplated by Manual Section 5213.54, the defendant's position was certainly unaffected. Had the delegation order been issued, no portion of her tax liability would have been relieved. The assessment would have been made just as it was made, tax lien notices would have been filed just as they were actually filed, and the defendant would have been just as delinquent as she is today.

IV

NOTICE AND DEMAND

After the assessment was made against the defendant, the Internal Revenue Service was bound to give her notice thereof, and demand payment, in accordance with Section 6303 of the Internal Revenue Code, and regulations thereunder. The defendant contends that no such formal notice was ever given to her, and this point appears to have been the most vigorously contested factual issue during the course of the litigation. The Revenue Officer has testified, and his own diary memoranda indicate, that on May 18, 1972, he delivered the formal demand documents to the defendant.

Despite her denial that she received the formal notice and demand, the defendant cannot reasonably deny that she timely received effective demand for payment.

After the assessment was made, the Collection Division of Internal Revenue was charged with collecting these liabilities in full, so that on a regular basis from week to week, or more often, the defendant was called upon to pay these liabilities, or to make arrangements for some form of installment payment, or to provide a complete statement of her financial affairs, including a list of all her assets. (Some of these requests were made upon her then attorney, rather than upon the taxpayer personally.) A demand for payment need not take the form of a delivery of the formal demand document (which delivery the defendant disputes), but may also take the form of a course of conduct. If by its own conduct, the Service adequately informs the taxpayer that his taxes are due and owing, or if by his own conduct, the taxpayer acknowledges that he owes these liabilities, then notice and demand is established, and the legal requirement is met. See In re Baltimore Pearl Hominy Co., 5 F. 2d 553 (C.A. 4, 1925).

The defendant's challenge to the form of notice and demand is a scholastic attempt to upset the Government's tax assessments, and clearly carries no equitable considerations whatever. The defendant had filed returns and acknowledged her liability, and clearly knew that her taxes were due and owing. The defendant learned nothing new when the Service served its demand for payment upon her. Indeed, Section 6151(a) of the Internal Revenue Code provides:

Except as otherwise provided in this section, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary or his delegate, pay such tax to the internal revenue officer with whom the return is filed and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return). [Emphasis added.]

Accordingly, at the time the return were filed, the defendant taxpayer had an immediate and unequivocal obligation to pay the liability in full, and was not . entitled in any manner to have the Government first serve papers on her.

When an assessment is made against a taxpayer, who fails to pay the liability after demand, an enforceable lien arises against all of his property and rights to property, pursuant to Section 6321 of the Internal Revenue Code. The defendant has therefore asserted that, by virtue of the failure of the Government to provide her with a demand for payment, the Government has no enforceable or valid lien with respect to those taxes assessed on May 16, 1972. In exchange for the entry of the consent judgment on February 6, 1976, the Government withdrew its lien foreclosure claims with respect to the assessments both of May 16, 1972, and of August 2, 1972, thereby mooting out the only possible legal consequence arising out of the (alleged) failure of the Service to give adequate notice and demand. To the extent that this Court will enforce the judgment of February 6, 1976, the Government will stand by its related undertaking, and will not press lien

foreclosure claims with respect to these assessments. Should the Court reopen the proceeding on the merits, the Government will of course be freed from its own stipulation.

Other than the existence of tax liens, no other relevant issue arises if, as the defendant contends, the Service failed to make demand for payment of these liabilities. The validity of the underlying assessments is not affected. No statute of limitations bars relief, nor is the jurisdiction of this Court in any manner diminished. The Government has entered this Court, and requested judgment in accordance with the defendant's own returns. Under such circumstances, entry of judgment, or the confirmation of the previously-entered judgment, is wholly appropriate.

V

THE CALIFORNIA SEIZURES

In 1975, prior to the commencement of this action, the Internal Revenue Service seized and sold several parcels of real property owned by the defendant in the State of California. The proceeds of the sale were applied to the tax liabilities at issue herein. The defendant has charged that these properties were sold at unreasonably low values, that the amount of money received by the Government (about \$9,000) represented only a small portion, possibly less than ten percent, of

the true value of the properties.^{6/}

Of course, the Government is not an insurer of value, and the defendant ran the risk that the distraint sales might bring unreasonably low prices. Her remedy under such circumstances was to redeem the property from the purchasers, pursuant to Section 6337 of the Internal Revenue Code. Apparently the defendant failed to make any such redemption, so that title vested in the purchasers.

Nevertheless, during the course of this litigation, the defendant has alleged that the seizures were in some manner "illegal," for the reason that the seizures were made pursuant to the assessment of May 16, 1972 (notice of which was never given to her, so that no lien arose, so that no levy might take place, etc.). However, the records of the Service, as previously provided to counsel for the defendant, indicate that the seizures of the real estate were made in part for unpaid payroll taxes accrued for the first quarter of 1973, as assessed on September 17, 1973. As of the time of the seizures (May of 1975), there was an outstanding balance upon this assessment

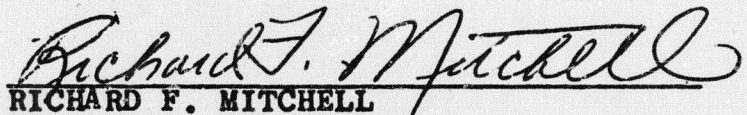
^{6/} It must be noted that Internal Revenue sold only the taxpayer's interest in the property. In other words, they were sold subject to any existing liens or mortgages that encumbered the defendant's interests. Despite the defendant's allegations concerning the true market value of her property, to date the defendant has not submitted to the Government any information concerning her underlying equity therein.

of \$23,185.94 -- much more than the Government received in its distraint sale. The defendant has never challenged the legality or the validity of the assessment for the first quarter of 1973, so that she may not in any manner contest the validity or the legality of the seizure undertaken pursuant to that assessment. So long as the seizures were undertaken with respect to a single incontestable assessment, the fact that the seizures were also made pursuant to the contested assessments is immaterial.^{7/}

CONCLUSION

The defendant has put forward no grounds upon which the consent judgment should be set aside, nor any basis upon which any other relief should be given to her. Accordingly, the Government's requested order of sale should be entered so that this case may be promptly concluded.

Respectfully submitted,



RICHARD F. MITCHELL
Trial Attorney, Tax Division
U.S. Department of Justice
Washington, D. C. 20530

DAVID G. TRAGER
United States Attorney

PROSPER PARKERTON
Assistant U. S. Attorney

^{7/} The Government would also contend that it is entirely inappropriate in the present action to litigate the validity of the California seizures, so long as all amounts received by the Service were duly credited upon the delinquent accounts of the defendant. To the extent that the defendant wishes to initiate any in rem proceeding to contest title to the seized California property, appropriate venue would appear to be in California. There are, of course, various jurisdictional limitations upon bringing suit against the United States in this regard.

DEFENDANT'S SUPPLEMENTAL MEMORANDUM OF LAW IN RESPONSE TO 218a
PLAINTIFF'S SUPPLEMENTAL MEMORANDUM
(Filed April 25, 1977) (pp.218a-225a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

Plaintiff,

v.

HELEN K. TASSOP, d/b/a
ST. ANDREW ACADEMY OF
THE SOUND, et al.,

Defendants

:

:

:

CIVIL ACTION NO. 75-C-1481

SUPPLEMENTAL MEMORANDUM OF
HELEN K. TASSOP, d/b/a

ST. ANDREW ACADEMY OF THE
SOUND, et al.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

APR 25 1977



TIME A.M.
P.M.

-----X

The Supplemental Memorandum of The United States was received at 9:30 A.M. on Thursday, April 21, 1977. Accordingly, very little time or opportunity has been provided for an answer. Nevertheless, this memorandum has been prepared because the Government's memorandum contains materials that are wrong and implications that are objectionable and demand a reply.

ISSUES

1. Is the defendant entitled to a new trial and the setting aside of the alleged "Consent Judgment" of February 6, 1976?

2. Is the United States entitled to a decree for the judicial sale of the defendant's real property?

STATEMENT

The United States brought this action on September 9, 1975, for a judgment against the defendant, Helen Tassop, and to foreclose tax liens, with respect to payroll and unemployment taxes accrued from 1969 through 1974. District Judge Orrin Judd entered a Preliminary Injunction on September 19, 1975, directing the defendant to make regular deposits of payroll withholding

taxes as required by law.

On February 6, 1976, the defendant was again before Judge Judd on a motion to punish her for contempt for not complying with the Preliminary Injunction. At that hearing, the attorney for the defendant, presented a check in the amount of \$13,000 to the attorney for the United States to keep defendant current with the withholding FICA liability. The Court ruled that the contempt motion was accordingly satisfied. At that point, the Government asked for a conference in the Judge's chambers. The Court granted a conference, which conference was taken down by the court stenographer. On page 6 of the stenographic record, Mr. Farrell, the attorney for the United States, at the very outset of the hearing, stated: "Now, the Government will concede that the liens as allegedly stated for which Notice of Demand was given on May 18, 1972 and August 11, 1972, were not valid liens."

The very essence of the defendant's position is that the Government has never truly established what monies are owed for what periods. On the other hand, the Government has been overzealous in its approach to defendant and defendant's property. The Government, in its Supplemental Memorandum, on page 13, states that :

"A demand for payment need not take the form of a delivery of the formal demand document (which delivery the defendant disputes', but may also take the form of a course of conduct. If by its own conduct, the Service adequately informs the taxpayer that his taxes are due and owing, or if by his own conduct, the taxpayer acknowledges that he owes these liabilities, then notice and demand is established, and the legal requirement is met."

This is typical of the Government's approach in this case. The Government's position is that by its very action of going after

the defendant, it was establishing all the requisite notices and formal demand necessary. Formal law and obedience by a government is not necessary in the Watergate atmosphere that the Government was operating under during these years. It is the defendant's position that Watergate no longer exists in America and that the Government must comply with formal rules just as any other citizen of this country.

On page 16 of the Supplemental Memorandum, the Government states that:

"However, the records of the Service as previously provided to counsel for the defendant, indicate that the seizures of the real estate were made in part for unpaid payroll taxes accrued for the first quarter of 1973, as assessed on September 17, 1973."

Unfortunately, for the Government, the seized property sale report prepared by the Government, and attached hereto as Exhibit A, indicates that the application of the proceeds were for the period December 1969. Since the Government has acknowledged that the liens for December 1969 were invalid, the Government, in effect, was really stating that the seizures of California real estate and the sales thereof were applied against an invalid lien. Thus, the Government's argument must fail in and of its own proof.

Going behind Mr. Farrell's statement with respect to the invalidity of the Government liens, we find on page 9 of the Supplemental Memorandum a statement that:

"The Government in this case has already ,
acknowledged that it cannot locate any such
delegation authority in effect in May, 1972."

This delegation authority is that which is required before agent Lapidus could obtain a "prompt assessment". If, indeed, agent Lapidus did not have the proper authority to obtain a prompt

assessment, then the entire procedure was wrong and violative of defendant's rights. This, basically, is defendant's position. If, in fact, the Government followed proper procedure, it should have a delegation authority issued in May of 1972. That would totally defeat defendant's argument and defendant would readily admit to it. However, that is not the fact as presented to defendant and to this Court. What did happen is that agent Lapidus acted improperly (without proper authority), prompt assessment was wrongly made, a levy was wrongly made, defendant's California property was wrongfully seized and sold, and such property, worth in excess of \$135,000 (as per the appraisals submitted to the Government), brought in less than \$10,000, which was applied against the 1969 invalid lien. Certainly, the defendant has the right to be a little bit upset over this activity.

There are other issues involved herein. A second issue is with respect to the misapplication or non-application of two credits totalling \$13,774.58 shown as arising from the year 1966. Withholding returns (Form 941) were filed for all four quarters of 1966, showing an aggregate liability of \$18,314.08. The return for the fourth quarter shows a liability of \$7,281.56. A total of ten checks with the 1966 returns, shows payment totalling \$20,458.66. These checks are dated at various times in 1967, the last being a group of three checks, all dated April 24, 1967, totalling \$7,281.56. There is a notice of overpayment from the Government dated September 6, 1968 in the amount of \$7,281.56 applicable to the fourth quarter of 1966. There is a bill dated June 20, 1969 for balance due for the fourth quarter of 1967 showing a credit of \$7,281.56, indicating that the 1966

overpayment was eventually applied to the fourth quarter of 1967. The same amount, \$7,281.56 also appears on a Notice of Tax Lien dated June 20, 1969 for the fourth quarter of 1967, and on a Certificate of Release of Tax Lien dated April 4, 1972. Apparently, the Government is totally wrong with respect to this item.

In addition, there is an amount of \$6,493.02 being FUTA Taxes (Form 940) for the year 1966. In the Government papers, it is indicated in a Notice of Overpayment of this amount dated May 5, 1967 that this is truly an overpayment. However, the Government apparently has failed to apply this credit to any benefit of the defendant.

There is a third issue relating to the first and second quarters of 1969, and an assessment totalling \$18,543.40. The defendant's position is that these assessments were made after the statute of limitations had run. Defendant has produced for the Government copies of the Form 941 for the first and second quarters of 1969 which had been filed in 1969. By the Government's own language on page 13 of its Supplemental Memorandum, wherein it referred to the Government's conduct as proof of anything, the Government admits that these returns were filed. On May 5, 1972, agent Lapidus prepared returns from the fourth quarter of 1969 through the first quarter of 1972 for defendant and defendant signed them. Obviously, if the first two quarters of 1969 had not been filed, agent Lapidus would have prepared them as well. By his failure to prepare them or even refer to them, we must conclude that by the Government's own action, it was admitting to the fact that it had these returns. Accordingly, the statute of limitations had indeed run before the Government

took any action with respect to these quarters. In fact, a "TDI Status Report" shows reference to the return for the first quarter of 1969 and is a clear indication that the Government had in fact received the returns in 1969.

Aside from the wrongful seizure and sale of the California property, the Government levied on defendant's bank accounts with Bankers Trust and First National City Bank without giving proper notice to the defendant. The Government's obvious position is that the defendant had not properly paid withholding taxes and thus, it could do anything it chose to go after defendant because its own "course of conduct" would substitute for proper procedures. This is the crux of defendant's problem. Defendant feels that the Government has been overzealous and has overreached, to the detriment of defendant. Defendant has never denied that taxes were due and owing to the Government and has always asked the Government for the opportunity to properly pay these taxes. This opportunity has been denied because the Government has never been able to show defendant exactly what was due and owing and has never given the defendant the opportunity to free her up assets so as to settle the matter with the Government. The alleged settlement on February 6, 1976, was admittedly a purely arbitrary figure selected by the Court (see page 2 of the Government's Supplemental Memorandum). The Court then supposedly advised both parties that they could submit for adjustments based upon facts. The Government so submitted, but defendant's lawyer failed to submit anything. The reason for this is unclear, but defendant alleges that her attorney refused to do any further work for her unless he was paid and defendant could not pay him because the Government had tied up

all of defendant's funds. If this be true, even this action by the Government has prevented justice from being done herein.

It might be re-emphasized that paragraph 0.03 of Revenue Procedure 60-4, found in 26 CFR 601.104, states that:

"Therefore, all jeopardy assessments, including those recommended in cases under consideration by the Regional Appellate Divisions, must be personally approved by the District Director of Internal Revenue."

This action was not taken with respect to the defendant and all that followed was wrongfully done.

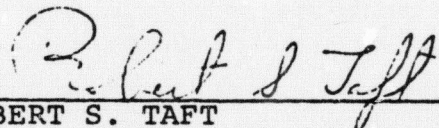
CONCLUSION

The defendant admits to some liability herein. However, the exact amount should be determined in a new trial which would be fair and open. The Government has been overzealous in its pursuit of the defendant and has acted outside of the formalities required by the law to the detriment of the defendant. The defendant should be given the opportunity of proving damages and offsetting the liability by these damages. In addition, the very amount of the liabilities is still in question and the Government has not been able to show clearly how it resolved the question of the overpayments of 1966 credits and the late assessment for the first two quarters of 1969. All of this mitigates for a new trial. Unfortunately, Judge Judd died before he had the opportunity to consider a new trial, and the alleged "Consent Agreement" arrived at in his chambers was never overturned. It is suggested that given all the facts, Judge Judd would have thrown out said alleged agreement and ordered a full trial. This is what defendant is requesting of this Court. Justice is not done when a government agency becomes judge and jury against a citizen of this country. We have had marvelous cooperation from

Richard F. Mitchell, the trial attorney herein and from the other governmental officers dealing with this case since the time I became associated with it. Unfortunately, this does not undo the wrongs committed prior thereto.

WHEREFORE, delendant respectfully requests that the Consent Judgment entered against her on February 6, 1976 be set aside and that a new trial be granted to hear the facts of this matter in open court, and for such other and further relief as to this Court may seem just and proper.

Respectfully submitted,



ROBERT S. TAFT
Associate Counsel for Defendant

**EXHIBIT A - SEIZED PROPERTY SALE REPORT ANNEXED TO
FOREGOING MEMORANDUM**

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Exhibit A.

SEIZED PROPERTY SALE REPORT

(Including property purchased by the United States)

1. NAME AND ADDRESS OF TAXPAYER H. K. Tassop 158-07 Riverside Dr. Beechurst, New York 11357 SOCIAL SECURITY OR EMPLOYER IDENTIFICATION NUMBER 11-1822476	2. AREA OFFICE 95-01-13	3. SERIAL NO. FORM 2433 CS 95-01-13- 5020
4. PLACE OF SALE 300 N. Los Angeles St., Rm 4054 Los Angeles, Calif. 90012 DATE OF SALE 07-15-75		

5. APPLICATION OF PROCEEDS							
Class Of Tax	TC	941	TC		TC		TC
Period		6912					
Expenses of Sale	360	13.59					
Lien Fees	360		360		360		360
Assessed Amount		7,087.41					
Accrued Penalty							
Accrued Interest							
Total		7,101.00					
Total Proceeds Applied						670	7,101.00

6. SALE PROCEEDS	
a. TAXPAYER'S TOTAL LIABILITY \$ 229,393.91	b. GROSS PROCEEDS OF SALE (If purchased by U.S. use "Minimum Bid Price") \$ 7,101.00
c. EXPENSES OF SALE (Itemize in Part 7) 13.59	d. NET PROCEEDS OF SALE (Line b minus lines c and e) 7,087.41
e. PRIORITY CLAIMS (From Form 4385) -0-	f. SURPLUS PROCEEDS, IF ANY (Line d minus line a) -0-

7. SCHEDULE OF EXPENSES		
NAME AND ADDRESS OF PAYEE	SERVICE RENDERED	AMOUNT
Los Angeles Daily Journal 210 S. Spring St. - Los Angeles, Ca 90012	Advertising	13.59
TOTAL (Note: Vouchers not previously submitted should be attached to quadruplicate copy)		\$ 13.59

8. CERTIFICATES OF SALE ISSUED TO (Attach copies to original of this form)	
a. <u>W. Germansen and Frederik Sorensen, jt tnf</u>	b.
c.	d.
e.	f.

9. SALE PROCEEDINGS			
NOTICE OF SEIZURE (To owner or possessor) ☐ GIVEN ☒ CERTIFIED MAIL	DATE 05-28-75	NOTICE OF SALE (To owner) ☐ GIVEN ☒ CERTIFIED MAIL	DATE 05-29-75
NOTICE OF SALE PUBLISHED IN (Newspaper) Los Angeles Daily Journal	06-02-75	NOTICE OF SALE POSTED AT POST OFFICE (Address) 5930 N. Figueroa - L.A. 90042	05-29-75
NOTICE OF SALE POSTED AT Hall of Admin. 500 W. Temple - L. A.	05-29-75	NOTICE OF SALE POSTED AT County Courthouse-111 N. Hill, LA	05-29-75
NOTICE OF SALE POSTED AT PLACE OF SALE	05-29-75	MANNER OF SALE ☐ PUBLIC AUCTION ☒ SEALED BID	
PROPERTY SOLD TO ☐ AS SEPARATE ITEMS ☐ IN AG- ☒ HIGHEST BIDDER(S) ☐ IN GROUPS OF ITEMS ☒ GREGATE		☐ PROPERTY DECLARED PURCHASED FOR UNITED STATES	

I certify that the sale was conducted in accordance with section 6335 of the Internal Revenue Code and the regulations thereunder, and that the information reported hereon is a true and correct record of the sale proceedings.

REVENUE OFFICER'S SIGNATURE (Conducting sale) <i>Linda A. Tapp</i>	REVENUE OFFICER'S SIGNATURE (Assisting in sale) <i>Allen W. Nemo</i>	DATE 07-15-75
--	--	-------------------------

NOTE: In sealed bid sales, attach Form 4385 to this report.

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF NEW YORK

3 -----X

4 UNITED STATES OF AMERICA, :

5 -against- :

6 HELEN K. TASSOP, :

7 Defendant. :

8 -----X

9 United States Courthouse
10 Brooklyn, New York
May 27, 1976

11 2:00 P.M.

12
13 B e f o r e :

14 HONORABLE ORRIN D. JUDD, U.S.D.J.
15
16
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19
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23
24

Henri Legendre

HENRI LeGENDRE
ACTING OFFICIAL COURT REPORTER

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D.N.Y.
★ MAY 4 1977 ★
TIME A.M. _____
P.M. _____
75-C-1481

A P P E A R A N C E S :

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: BRIAN FERRELL, ESQ.

GENE CRESCENZI, ESQ.
Attorney for Defendant.

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1 THE CLERK: Civil motion, U.S.A. v. Helen K.
2 Tassop, et al.

3 THE COURT: Government's motion directing
4 sale and of the defendant's motion for order
5 correcting judgment, but it states correcting it in
6 a statement of counsel -- "Account which will be
7 submitted."

8 You are not ready to submit that account?

9 MR. CRESCENZI: That's correct. I haven't
10 had an opportunity to meet with the accountant.

11 THE COURT: I think you are asking some
12 things that are beyond my power. You are asking me
13 to reconsider all penalties with a view towards
14 reduction, those are statutory, I can't change an
15 assessment.

16 MR. CRESCENZI: What you say is correct,
17 your Honor, but the record seems to -- I don't
18 imagine your Honor -- your Honor is expecting a
19 response at this point to your comment, or shall we
20 defer to the argument.

21 THE COURT: The state of the record is that
22 I find a memorandum -- really on the back of an
23 order in February when Mr. Ferrell asked for
24 correction of the judgment, which read: "Motion
25 granted, submit order," and I don't find that an

1 order has been entered yet, and the order was for
2 correcting judgment for seventh of May.

3 MR. CRESCENZI: We are current.

4 THE COURT: That doesn't alter the fact
5 whether it's \$297,000 or, even if it's only \$197,000,
6 she's in default on assessment, and there is a lien.

7 MR. CRESCENZI: That's correct.

8 THE COURT: I don't know what you could have
9 done to prevent the entry of an order to sell the
10 property. What I find an order to sell the property
11 it depends on advertising and appointment of a
12 referee and maybe I could postpone the sale far
13 enough.

14 MR. CRESCENZI: If we could have two months'
15 suspension, I think we could bring the accounting
16 up to an adequate position with respect to actual
17 dollars amount by sitting down and doing the correct
18 arithmetic. I want to direct myself at this time to
19 the practical side of my argument. We have a commit-
20 ment for \$100,000 refinancing --

21 THE COURT: The last time I heard of \$100,000
22 you were going to use sixty of it on other matters;
23 it wouldn't be more than forty to take care of the
24 government.

25 MR. CRESCENZI: We don't have a formal bank

1 commitment on this, and this is another reason why
2 I feel that the financial obligations will be met.
3 If we get the \$175,000 we'll be able to pay off
4 fifty-five to sixty thousand of the prior lien and
5 we'll be left with fifteen thousand plus. There are
6 outstanding credits that will be produced by the
7 accountant an accurate accounting of this matter.

8 There are also other items of consideration,
9 your Honor, which should certainly come into opera-
10 tion, and that is the question of the validity of
11 some of the liens which had been brought up in this
12 matter, had been completed by the government and I
13 took this up with the State Department.

14 One of the gentlemen said if the Greek
15 government came to him with \$300,000 he would still
16 oppose the continuance of Mrs. Tassop in her school.
17 When I heard about the Greek government I looked into
18 it and sure enough, I found out that in 1960 the
19 Greek government gave accreditation in Greece, and
20 I took this up with the State Department. They
21 said we are interested in this and they spoke to
22 Mr. Ferrell.

23 There were three points of interest. One
24 point of interest was to make sure that the people --
25 that the Greek government possibly could be offended

1 about this and there could be repercussions.

2 THE COURT: I don't care if they are offended
3 by the United States. These are taxes that were
4 withheld from salary.

5 MR. CRESCENZI: I haven't said we don't want
6 to pay the taxes.

7 THE COURT: Let them come forward with money.

8 MR. CRESCENZI: The fact that this is
9 essentially a charitable organization, its under
10 the sponsorship of the Archdiocese of North and South
11 America of the Greek Orthodox Church. We have
12 American schools in Greece which might possibly
13 affect American citizens attending schools in Greece.

14 I spoke to Mr. Day in the State Department
15 Tuesday, and he told me he was very concerned about
16 that. He wants me to report back to him, and in
17 response to his continued interest in this matter --
18 and of course I would appreciate -- all I'm asking
19 of the Court is for approximately two months so that
20 I could solve all of these problems, and the govern-
21 ment will get every penny that is due the government
22 and we won't have these taxable embarrassments with
23 the State Department.

24 THE COURT: I would not suppose that the IRS
25 is going to be frightened by threats of reprisal

1 against somebody for the collection of taxes.

2 MR. CRESCENZI: I'm convinced about that.
3 What I'm really asking for is forbearance with a view
4 to taking us out of this problem.

5 THE COURT: My first interest on this is
6 September 9 when Miss Tassop was represented by
7 Mr. Brockman. I had hearings on September 19 and
8 conferences on September 10; one when Mr. Newman
9 represented Miss Tassop on January 22, on February 6,
10 on April 9, on May 7. There was a stipulation, that
11 she would keep current.

12 It wasn't until I signed a contempt commit-
13 ment that she finally became current. I would think
14 that the thing to do is sign the judgment of sale and
15 put the sale off for --

16 MR. CRESCENZI: Two months is all I need.
17 A very important consideration is the anxiety, she's
18 sick, falling apart from this. That's the reason I
19 want that stay.

20 THE COURT: Her troubles are largely what's
21 called self-inflicted wounds.

22 MR. CRESCENZI: I have no quarrel with that.
23 I'm trying to give her the guidance that our system
24 justifies. We wanted to give the United States
25 government every nickel. I hope that we are not

1 causing any kind of behavioral anxieties on the part
2 of the gentlemen who whetted their appetites so
3 vigorously for the school. Now, my discussion with
4 the IRS, it seems that this is the obstacle to every-
5 thing, declare war on Greece, so forth and so on.

6 They didn't say that but I'm thinking down-
7 stream, maybe this is what somebody has in mind.
8 There is no other explanation for that.

9 THE COURT: The other explanation is that
10 they are withholding social security taxes in six
11 figures which are unpaid, and which is the obligation
12 of the IRS to collect.

13 MR. CRESCENZI: In that regard I discussed
14 the possible value on distress sale of this real
15 estate, I was told it would probably bring \$200,000,
16 netting approximately \$140,000. I think if we get
17 this financial commitment which seems to be surely
18 within our reach, I would think that we could come up
19 with something certainly closer to that hundred and
20 forty -- and you are going to get real American money
21 for it.

22 All these other arguments will be, perhaps,
23 not loot, not academic but an experience like this is
24 always there.

25 THE COURT: Well, you have a motion to amend

1 the judgment in accordance with the statement of
2 account which will be submitted. /

3 MR. CRESCENZI: That's correct.

4 THE COURT: I'll give you a time in late
5 June. I'll postpone this so you could try and work
6 out something.

7 MR. CRESCENZI: Would you please?

8 THE COURT: Since the order correcting
9 judgment is something I granted before, I'm going
10 to sign that because that's just completing the
11 record.

12 Now, let me put this over from today, the
13 27th, to my motion calendar on the 25th of June.
14 I'll put it down for 11:00 o'clock after we get
15 some of the other things out of the way. This
16 is the motion to correct.

17 MR. CRESCENZI: This is the defendant's
18 motion to correct.

19 THE COURT: The order on yours I'm now
20 signing.

21 Now, with respect to the order of sale.

22 MR. CRESCENZI: May I have a suspension on
23 that?

24 THE COURT: I know in a State court fore-
25 closure you frequently have a referee to compute

1 before you have your referee to sell, but that seems
2 to be somewhat academic here. I doubt very much
3 whether there is going to be any surplus. The only
4 question will be whether before the actual sale you
5 could come up with a bank commitment and an offering
6 compromise.

MR. CRESCENZI: I could work so much better
8 if I know there is a stay in the execution on all
9 proceedings until the day we have that motion. It
10 would make me work that much easier. Something like
11 a lien over her head, I don't know -- I think it's
12 cruel and inhuman punishment --

MR. FERRELL: As far as I'm concerned there
14 has been a great deal of forbearance by the Department
15 of Justice in connection with this matter for the
16 past three years. What I would like to suggest, I
17 would anticipate that the Court might suggest that I
18 prepare some form of decree, an order of sale, that
19 would take me two weeks to get it into final form.

20 If it meets with the approval of the Court
21 it would provide for advertising the sale of the
22 property for at least four weeks, that's the provision
23 in the federal code and State law, which would be
24 six weeks in which counsel -- new counsel for
25 Ms. Tassop could attempt to come forward with some

1 substantial offer to the government. He's indicated
2 a great deal of outside pressure being asserted. I
3 want to bring one factor to the Court's attention. I
4 spoke to the Astoria Federal & Savings Loan, she
5 owes a first mortgage on this property and I spoke to
6 a John Graham who is an attorney, and I spoke to a
7 Mr. Price, bank officer on this loan.

8 Mr. Price informed me with Mr. Graham's
9 approval and authorization, to advise the Court that
10 the mortgage is in favor of the Astoria Federal &
11 Savings Loan is four years in arrears, and the bank
12 is referring this case to their attorney, Mr. Graham,
13 to start a foreclosure order in State court.

14 The bank indicates that they have filed these
15 proceedings. They want to see the property sold
16 subject to their mortgage, and they advised me if
17 the proceeds to cover their motion came off the top
18 they would be equally happy with that.

19 THE COURT: I'll grant the motion directing
20 the sale. I will provide that the advertising not
21 begin until after June 25, that will give you a chance
22 to have four weeks advertising and have the sale the
23 last week in July when I am back from vacation, and
24 if you come in on June 25 with something substantial
25 I could postpone the advertising. That's the most

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1 I'll do for you.

2 MR. CRESCENZI: 11:00 A.M.?

3 THE COURT: 11:00 A.M. on the 25th. Mean-
4 while you could submit an order, motion to grant it
5 subject to submitting an order, and provide for me
6 to fix the time for the advertising.

7 MR. FERRELL: That would begin June 25,
8 four weeks after that.

9 THE COURT: You should give some considera-
10 tion how we treat the tendency of the motion to
11 change the amount to which of the property is going
12 to be sold. I don't think there is any indication
13 that Mr. Crescenzi would come up with anything
14 below \$200,000 as is his contention as what the
15 figures should be and consequently, the exigencies
16 are such I think the sale can go ahead subject to an
17 accounting, if there is a surplus, even it sells for
18 \$200,000. Then you have sixty thousand owing on the
19 Astoria mortgage and fifty other means. You are not
20 going to come up with enough to pay the taxes.

21 MR. CRESCENZI: That's correct. There was
22 some voice given to the figure of \$140,000 as
23 possibly a figure -- interim figure whereby we could
24 have further postponement of this matter.

25 THE COURT: I would suppose if you came up

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1 with a certified check for \$140,000 that the IRS
2 would take under serious advisement any offer or
3 compromise of that sort.

4 MR. CRESCENZI: Yes, your Honor, thank you.

5 THE COURT: June 25, submit order. This
6 can be docketed.

7 MR. FERRELL: Can I just add one other thing.
8 There is one other thing about the parents of the
9 students at the school We could be criticized of
10 not giving them notice of what's going on.

11 THE COURT: All the IRS has is a lien, it's
12 a public courtroom. The obligation not to defraud
13 the students is on Miss Tassop, she has a lawyer.
14 I'm not going to direct the IRS to do something
15 which might interfere with any plans of here, but
16 I think Mr. Ferrell is suggesting, Mr. Crescenzi,
17 that if she collects tuition for next fall she better
18 keep it in a separate account so it's not misused.

19 MR. CRESCENZI: I'll take it up with her.

20 MR. FERRELL: The students may need another
21 school to go to.

22 MR. CRESCENZI: I'll take it up with Miss
23 Tassop.

24 - - -
25

DEFENDANT'S BRIEF, DATED MAY 5, 1976, IN OPPOSITION TO
IRS COMPUTATION OF TAX LIABILITY DUE (pp. 240a-246a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :

Plaintiff, :

v. :

HELEN K. TASSOP, d/b/a :
ST. ANDREW ACADEMY ON :
THE SOUND, et al., :

Defendants. :

-----X

CIVIL ACTION
No. 75-C-1481

DEFENDANT'S BRIEF

Statement of Fact

The intention of this brief is to show that the Internal Revenue Service is wrong in its computation of the tax liability due and owing from the defendant herein. Being wrong, justice will not be done by not permitting the defendant to amend and correct the judgment of this Court entered on February 9, 1976 as modified by order of the Court dated May 27, 1976 in the amount of \$297,093.50. In his affidavit of July, 1976, Brian Ferrell, attorney for the plaintiff, states that Judge Orrin Judd, at the hearing on June 25, 1976, denied the May 17, 1976 motion of the defendant to amend and correct the said judgement. The Court calendar of that date indicates to the contrary. Judge Judd records that he reserved decision on defendant's motion.

Unfortunately Judge Judd died shortly thereafter and no decision was ever made. In fact, even the stenographic record of this hearing is lost. Accordingly, the decision is still "open" as far as the Court proceeding is concerned.

Argument

In Mr. Ferrell's affidavit referred to above, he explains that \$6,493.02 payment and/or credit of May 5, 1967 was applied to the unpaid liabilities for the second quarter of 1966. The fact of the matter is that the second quarter payment for 1966 was paid by Bankers Trust Company check #457, dated April 10, 1967 to the order of Internal Revenue Service in the amount of \$6,550.62. Exhibit A attached hereto is a copy of the second quarter return and the check for payment. Thus, the May 5, 1967 payment referred to by Mr. Ferrell was misapplied by Internal Revenue Service and should still be available to defendant herein as a credit against here liability.

Similarly, Mr. Ferrell states that the \$7,281.55 payment and/or credit of September 6, 1968 was applied to the unpaid liabilities for the fourth quarter of 1966. In point of fact, the fourth quarter of 1966 was paid by the defendant herein in April of 1967 by three checks made out to Internal Revenue Service in the respective amounts of \$2,500, \$2,500, and \$2,281.56. Exhibit B attached hereto is

a copy of the fourth quarter return for 1966 and the three checks in payment. Accordingly, the \$7,281.55 payment of September 6, 1968 was misapplied and is available to defendant as a credit against her liability.

Mr. Ferrell, in the same affidavit, states that the Internal Revenue Service cannot locate defendant's returns for the first and second quarter of 1969. Unfortunately, the Internal Revenue Service could not locate the Commissioner's consent to prompt assessment and other documents requested by defendant of the Internal Revenue Service. This is no reflection on defendant, but rather a reflection on bad bookkeeping of the Internal Revenue Service and its computers. In point of fact, defendant filed the 1969 tax returns for the first two quarters, copies of which are attached hereto as Exhibit C. These returns were given either to Mr. Gartman or Mr. Hascup of the Flushing office of the Internal Revenue Service in 1969. It should be noted by the Court that agent Lapidus, when he started working on defendant's returns in March of 1972, started to work on all of the returns that had problems and mentioned a balance pending on the last quarter of 1976 and requested all returns starting with the last quarter of 1969 for his review. He apparently was not troubled by the returns for the first two quarters of 1969, thus implying that they were on record with Internal Revenue Service and

not a problem. Similarly, agent Hecht, in his sworn affidavit which is a part of the records of the Court, did not refer to the first and second quarters of 1969 as problems. In his deposition, Agent Lapidus stated that he checked in 1972 through another agent with the help of the computer and the readout indicated that the first and second quarters of 1969 had been filed. The evidence clearly points to the fact that the first two quarters of 1969 were indeed filed and that, accordingly, when the Internal Revenue Service began its collection procedures for those quarters, the statute for limitation on collection had already run and thus, the defendant, is entitled to a credit in the amount of \$18,543.40 which is available to her against the current liability.

Mr. Ferrell, on the record, stated that the liens encompassing the tax periods ending December 31, 1969, March 31, 1970, June 30, 1970, December 31, 1970, March 31, 1971, June 30, 1971, December 31, 1971, March 31, 1972, June 30, 1972, and December 30, 1972, were invalid and wrongfully obtained by Internal Revenue Service. Accordingly, the transactions arising from these wrongfully applied liens are also wrongful and illegal. The primary transactions referred to hereto are the seizure of the California properties without the appropriate delegation of authority and the sale thereof.

The sale raised about \$10,000, which was then applied to the 1969 tax liability. Either there was no tax liability in 1969 because the statute had run or there was no liability for that year because of the credits which were still in favor of the defendant and should rightfully have been applied to that year. In either event, the sale of the California property was wrongful and illegal and caused the taxpayer a loss of about \$120,000 or more. This is indicated as per the appraisals attached hereto and made a part hereof as Exhibit D. At the least, defendant should be given credit against her liability for the difference between the monies received by Internal Revenue Service on the illegal sale of the California properties and their fair market value today. It should be noted the appraisal attached hereto does not include a vacant lot in LaCrecenta, Los Angeles which was also seized and sold by the Internal Revenue Service in 1965. The present price of that property, we are advised is between \$10,000 and \$15,000. Admittedly, defendant's claims with respect to the California property could be the subject of a separate action by defendant against plaintiff. That would, however, defeat defendant as St. Andrews would be destroyed by a judgment and sale in this action while awaiting a hearing on the separate action. Equity demands that these matters be considered together.

The adjustments referred to above obviously affect interest and penalties as well as actual amount of taxes due and owing from defendant. When totalled, the adjustments would probably be around \$180,000 to \$190,000 which should be credited for the benefit of defendant. This would make her outstanding liability to Internal Revenue Service about \$110,000. If this amount is fixed by this Court, defendant will pay said amount within a given time.

Part of the problem in the defendant's reconstruction of the prior years is that the Internal Revenue Service has been unable to supply relevant materials requested under the Freedom of Information Act. For example, defendant requested Forms 23-C for 1972; the forms provided to defendant do not seem to belong to defendant, do not contain defendant name or address, and the figures do not appear to relate to the defendant. Accordingly, defendant has requested from Internal Revenue Service the proper forms but has not yet received said forms. Until such time as forms are received, it is very difficult for defendant to come up with an appropriate figure.

Conclusion

Judge Judd was considering defendant's motion to amend the consent judgment with respect to her liability when he died. At the hearing on June 25, 1976, prior to his

death, he requested of Mr. Ferrell substantiation for the government's position in answering defendant's allegations with respect to credit due and owing her. Mr. Ferrell submitted an affidavit and this affidavit has now been shown to be erroneous in many respects. It should be noted that Mr. Ferrell testified under oath on April 22, 1977 that he gave defendant an extension beyond the original 30 day period subsequent to February 6, 1976 to submit her modification figures. Nevertheless plaintiff wrongfully rushed entry of judgment to February 9, 1976. Had Judge Judd lived, there is no doubt that he would have discovered the mistakes in Mr. Ferrell's affidavit and granted defendant the right to amend the consent judgment based upon the true liability. It is respectfully requested that this Court so grant defendant's motion to amend the consent judgement, giving defendant credit as indicated above; and that defendant be given a reasonable amount of time to make payments before further action by Internal Revenue Service is taken with respect to foreclosure and sale of her properties, and for such other and further relief as to this Court may deem just and proper.

Respectfully submitted,

Robert S. Taft

Robert S. Taft
Attorney for Defendant

EXHIBITS ANNEXED TO FOREGOING BRIEF:

EXHIBIT A - RETURN FOR SECOND QUARTER 1966 WITH CHECK
(pp. 247a-248a)

247a

EMPLOYER'S QUARTERLY FEDERAL TAX RETURN U.S. Treasury Department—Internal Revenue Service	
FEDERAL INCOME TAX WITHHELD FROM WAGES	1. AMOUNT OF INCOME TAX WITHHELD (If not required write "None") <u>3,228.40</u> <u>3228.40</u>
	2. ADJUSTMENT FOR PRECEDING QUARTERS OF CALENDAR YEAR <u>252.96</u>
	3. ADJUSTED TOTAL OF INCOME TAX WITHHELD <u>252.96</u>
FEDERAL INSURANCE CONTRIBUTIONS ACT TAXES	4a. TAXABLE WAGES PAID (From Item 21) <u>25,296.77</u> X 8.4% <u>2,124.92</u>
	4b. TAXABLE TIPS REPORTED (Item 22) <u>212.19</u> X 4.2% <u>8.91</u>
	5. TOTAL F.I.C.A. TAXES (Item 4a plus Item 4b) <u>2,133.83</u>
	6. ADJUSTMENT (See instructions)
	7. ADJUSTED TOTAL OF F.I.C.A. TAXES <u>2,133.83</u>
TOTALS	8. TOTAL TAXES (Item 3 plus Item 7) <u>5,362.23</u>
	9. TOTAL OF ENCLOSED DEPOSITARY RECEIPTS (From Schedule B, other side)
	10. BALANCE DUE (Item 8 minus Item 9) PAY TO "INTERNAL REVENUE SERVICE" <u>5,362.23</u>

2nd Q 1966

YOUR COPY

ST. ANDREW ACADEMY
ON THE SOUND
158-07 Riverside
Beechhurst, N.Y.
11-1822476N

2nd Q
1966

IMPORTANT.—Keep this copy and a copy of each related schedule or statement.

Before filing the return be sure to enter on this copy your name, address, and identification number, and the period for which the return is filed.

ST. ANDREW ACADEMY ON THE SOUND
158-07 Riverside Dr.
Beechhurst, N.Y.
11-1822476N

14. (First quarter only) Number of employees (except household) employed in the pay period including March 12th. 15. Total pages of this return, including this page and any pages of Form 941a. 16. Total number of employees listed.

List for each employee, except agricultural employees, the WAGES taxable under the Federal Insurance Contributions Act (for Social Security) which were paid during the quarter. If you pay an employee more than \$6.50 in a calendar year, report ONLY THE FIRST \$6.50 of such wages. In the case of "1-a income" see instructions.

SAVE TIME AND MONEY—If your report shows each employee's name and number exactly as they appear on his Social Security card it will not be necessary to write back to you to ask for the correct information.

17. EMPLOYEE'S SOCIAL SECURITY ACCOUNT NUMBER (If number is unknown, see Circular 3)	18. NAME OF EMPLOYEE (If type or grade)	19. TAXABLE WAGES PAID to Employee in Quarter (Include imputed) Dollars Cents	20. TAXABLE TIPS REPORTED (See instructions on page 4) Dollars Cents
114-24-6718	Dolores Shanahan	1833.33	
084-34-6321	Marjorie Menzi	1500.00	
064-34-9397	Barrie Selesko	2602.00	
050-32-4823	Betty Walk	980.00	
091-36-9162	Bonnie Lee Hawes	1666.65	
162-12-8407	Frances Wood	1500.00	
052-32-2609	Fani Meimaris	999.99	
578-46-6303	Ralph Manogue	1666.65	
072-34-8941	Louis Calastro	1666.65	
043-14-3476	Jean Graves	1200.00	
102-34-7900	Carol Figone	1500.00	
084-34-6655	Penelope Goigel	1666.65	
118-34-7921	Louis Kraus	1080.00	
064-32-7826	Chris Carassas	980.00	
083-03-9713	Elizabeth Scully	518.40	
057-32-1864	Jules Kajian	1733.31	
131-36-2550	Lily Chris	199.98	
131-34-8912	Gary Turits	1350.00	
020-38-1887	Sheila Rega	690.00	
102-34-8628	Alvin Figiel	876.00	
040-34-1425	June Waddington	622.50	

If you need more space for listing employees, use Schedule A continuation sheets, Form 941a. Totals of wages and tips reported in columns 19 and 20 on this page

21. TOTAL WAGES TAXABLE UNDER F.I.C.A. PAID DURING QUARTER (Total of column 19 on this page and continuation sheets.) Enter here and in line 4a above	<u>25,296.77</u>
22. TOTAL TIPS REPORTED DURING QUARTER (Total of column 20 on this page and continuation sheets.) Enter here and in line 4b above	<u>212.19</u>

CHECK IS IN FULL PAYMENT OF THE FOLLOWING
AND THE PAYEE ACCEPTS IT AS SUCH.

PARTICULARS	AMOUNT
APR 10 1967	16
TOTAL OF INVOICES	16
AMOUNT OF CHECK	16

BANKERS TRUST COMPANY

41-22 BELL BOULEVARD, BAYSIDE, N. Y.

NO. 457

April 10 1967 $\frac{1-103}{210}$

PAY TO THE ORDER OF

General Revenue

for Hudson

16
7705

\$6550.62
CERTIFIED
ST. ASST. CLERK ON THE SOUND

John K. Jones

0210001031640336537

0000655062

EXHIBIT B - RETURN FOR FOURTH QUARTER 1966 AND THREE CHECKS
(pp. 249a-250a)

249a

FORM 941
(Rev. April 1966)

EMPLOYER'S QUARTERLY FEDERAL TAX RETURN
U.S. Treasury Department - Internal Revenue Service

FEDERAL INCOME TAX WITHHELD FROM WAGES	1. AMOUNT OF INCOME TAX WITHHELD (If not required write "None")	4,458.70
	2. ADJUSTMENT FOR PRECEDING QUARTERS OF CALENDAR YEAR	
	3. ADJUSTED TOTAL OF INCOME TAX WITHHELD	4,458.70
FEDERAL INSURANCE CONTRI- BUTIONS ACT TAXES	4a. TAXABLE WAGES PAID (From Item 21) \$	33,605.57
	4b. TAXABLE TIPS REPORTED (Item 22) \$	2822.86
	5. TOTAL F.I.C.A. TAXES (Item 4a plus Item 4b)	2822.86
	6. ADJUSTMENT (See Instructions)	
TOTALS	7. ADJUSTED TOTAL OF F.I.C.A. TAXES	
	8. TOTAL TAXES (Item 3 plus Item 7)	
	9. TOTAL OF ENCLOSED DEPOSITARY RECEIPTS (From Schedule B, other side)	
	10. BALANCE DUE (Item 8 minus Item 9) PAY TO "INTERNAL REVENUE SERVICE"	7281.56

4th Q 1966

YOUR COPY

15807 Riverside 11-1822476N
Rochester, N.Y.

IMPORTANT.—Keep this copy and a copy of each related schedule or statement.

Before filing the return be sure to enter on this copy your name, address, and identification number, and the period for which the return is filed.

15807 Riverside 11-1822476N
Rochester, N.Y.

14. (First quarter only) Number of employees (except household) employed in the pay period including March 12th.	15. Total pages of this return, including this page and any pages of Form 941a.	16. Total number of employees listed.
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List for each employee, except agricultural employees, the WAGES payable under the Federal Insurance Contributions Act (the Social Security) which were paid during the quarter. If you pay an employee more than \$6,000 in a calendar year, report ONLY THE FIRST \$6,000 of such wages. In the case of "Tip Income" see instructions.

SAVE TIME AND MONEY—If your report shows each employee's name and number exactly as they appear on his Social Security card it will not be necessary to write back to you to ask for the correct information.

17. EMPLOYER'S SOCIAL SECURITY ACCOUNT NUMBER (If number is unknown, see Circular 56)	18. NAME OF EMPLOYEE (Please type or print)	19. TAXABLE F.I.C.A. WAGES (Paid to employee in quarter (Before reductions))	20. TAXABLE TIPS REPORTED (See instructions on page 4)
Dollars Cents		Dollars Cents	Dollars Cents
114-24-6718	DOLORES SPANIAN	1999	98
084-34-6321	MARJORIE GORSUCH	1666	65
162-12-8407	FRANCES WOODS	1533	33
064-34-9397	BARRIE SELESKO	1004	00
058-22-4721	JOSEPHINE TAPERNOUX	1666	65
129-34-9671	MARGUERITE MARIE VBIT	1500	00
020-38-1887	SHEILA BARDARA REGA	936	00
052-32-2609	FANI MEIMARIS	999	99
495-44-6383	CHIRQUITA R. SIMPSON	1566	66
057-32-1864	JULES KAJIAN	1899	90
131-36-2350	LILY CHRIS	190.98	
122-34-2913	LILLIAN G. CASTANEDA	1030	00
205-32-3698	RONALD GORDON	1916	66
006-44-6961	PAMELA IARRIS	1222	22
109-40-0042	CONSTANTINE ABDALAS	726	00
064-32-7826	CHRIS CARASSAS	1176	00
089-38-3725	BARBARA SCHIAVONE	1250	00
169-32-9564	CHARLOTTE JOYCE JACOBS	1295	00
102-34-7900	CAROL FIGONE	1666	65
063-42-8250	JUSTING URSINI	945	00
072-34-6898	NAOMI BOOKBINDER	470	00
078-38-9509	TERRI ALBANESE	630	00
118-34-7921	LOUISE KRAUS	1900	00
089-38-4470	SANDRA BENSON	636	00
055-40-0559	ERIKA SZESZLER	860	00
131-26-5552	PAULINE CALCATERRA	834	25
	TULIO CALANDUCCI	1666	65

If you need more space for listing employees, use Schedule A continuation sheets, Form 941a.

THIS CHECK IS IN FULL PAYMENT OF THE FOLLOWING
AND THE PAYEE ACCEPTS IT AS SUCH.

BANKERS TRUST COMPANY.

41-22 BELL BOULEVARD, BAYSIDE, N. Y.

NO. 483

DATE	PARTICULARS	AMOUNT
	Part of 4th Q 1966	
	TOTAL OF INVOICES	
	LESS	
	AMOUNT OF CHECK	

PAY
TO THE
ORDER OF

April 24 1967 1-103
210

INTERNAL REVENUE SERVICE

\$ 2500.00

TWO THOUSAND FIVE HUNDRED AND.....00/100

DOLLARS

ST. ANDREW ACADEMY ON THE SOUND

10 1567

16 17 70 6

0-1-19-27 GEM

0310001031164033653711

0000 250000

BANKERS: TRUST COMPANY

41-22 BELL BOULEVARD, BAYSIDE, N. Y.

NO.

THIS CHECK IS IN FULL PAYMENT OF THE FOLLOWING
AND THE PAYEE ACCEPTS IT AS SUCH.

[illegible]

PAY
TO THE
ORDER OF

1-403

Ch. 14 1967 $\frac{1-103}{210}$

Internal Revenue
CITY OF LOS ANGELES
TWO HUNDRED AND FIVE
-164- 7706

\$2500

ST. ANDREW ACADEMY ON THE SOUND

1617706

POLYMER LETTERS

1:0210001031:160336537

0000 2 50000

BANKERS TRUST COMPANY

41-22 BELL BOULEVARD, BAYSIDE, N. Y.

NO. 484

THIS CHECK IS IN FULL PAYMENT OF THE FOLLOWING
AND THE PAYEE ACCEPTS IT AS SUCH.

[illegible]

PAY
TO THE
ORDER OF

April 24 1967 $\frac{1-103}{210}$

INTERNAL REVENUE SERVICE

\$2281.56

TWO THOUSAND-TWO HUNDRED EIGHTY-ONE 56/100

NE 56/100 ----- DOLLARS
ST. ANDREW ACADEMY ON THE SOUND

10

16 17796

100-100000

1:0210001031:1640336537"

0000 2 28 1 56

